

TAMING THE TRANSITION **IN** **SCHEDULED AREAS**

REPORT OF
BHURIA COMMITTEE
ON
SELF-RULE
IN
URBAN AREAS

Dr. B.D. SHARMA

About the Booklet

The Second Report of Bhuria Committee is presented here with a critical review of the events after the Provisions of Panchayats (Extension to the Scheduled Areas) Act became effective in 1996. This Act was based largely on the recommendations of the First Bhuria Committee on Panchayats. The Urban Report is a continuation of Panchayats Report. The Fifth Schedule of the Constitution itself presents a holistic frame for the administration of entire Scheduled Areas, rural and urban. Nevertheless areas caught in the whirl of change due to development in these resource-rich regions are urbanised and need special attention for protecting the simple tribal people.

Bhuria Reports present a reasonable frame for 'Taming the Transition'. In the people-centric frame, the command over the habitat is non-negotiable yet the rich resources can be used optimally for national development. The Report has been ignored now for more than six years. The urban affairs in the Scheduled Areas are being managed without any authority of law simply because Part IXA of the Constitution concerning Municipalities has not been extended to those areas.

A historic judgement of the Supreme Court upholding the non-negotiability of the command has shaken the establishment out of slumber. The impulsive response is to amend the Constitution. The tribal people, however, are asserting their natural rights over the resources, which are affirmed by the Constitution, the Fifth Schedule and the Court verdict but are not dependent on them. Certain basic issues have come to the fore amidst the great confusion created in the country with a queer amalgam of democratic values, socialistic aspirations, overbearing market and globalised polity.

Here is an agenda for serious deliberations at all levels.

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of
Stuvia Committee

Urban Area

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Scheduled Areas

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Contents

1. Introduction

7

2. Taming the Transition

13

3. The Second Report of **BHURIA COMMITTEE** on Urban Bodies

49

4. The Provisions of Panchayats (Extension to the Scheduled Areas)

Act, 1996

108

5. Important References

111

Contents

1. Introduction

2. Tanning the Transition

3. The Second Report of

MINISTER OF MINISTRY

on Urban Bodies

as

4. The Provisions of Paragraphs

(Extension to the Scheduled Areas)

Act, 1990

198

5. Important References

iii

INTRODUCTION

'*Whither Tribal Areas?*' with a Big Question Mark was presented in 1995 along with the *First* Report of Bhuria Committee on Panchayats. The provocation was a Judgement of the Hon'ble High Court of Andhra Pradesh. The application of the A. P. Panchayat Act, 1994 to the Scheduled Areas was declared as unconstitutional. The elections to the Panchayats were stopped mid-way. In fact, all the governments, that is, the Union and the State as well as the Parliament and the State Legislatures were in the dock for inaction in their respective spheres. That inaction, which is not uncommon where issues concern the commonman, was blatant violation of the Constitution.

Nevertheless even that shock was not severe enough to shake the establishment out of its slumber of inaction. It was after more than a year, and an indefinite fast by tribals from all over the country at Rajghat in Delhi in that there was all party consensus about accepting the recommendations of the Committee and extending the provisions of Panchayats in Part IX of the Constitution to the Scheduled Areas with exceptions and modifications suggested therein. The Provisions of Panchayats (Extension to the Scheduled Areas) Act (Hereafter referred to as *the Extension Act*) was passed in 1996. It came into effect on 24-12-1996.

Yet no lesson appears to have been learnt. More than 5 years have rolled by after that episode. A somewhat similar situation has again arisen in the Scheduled Areas concerning urban areas, but with a vital difference. Even though the implementation of the Extension Act has hardly begun and significant resistance against the basic premises of that law is developing in the System, the message about self governance as a natural right is spreading. *The result is that the perspective of the ordinary tribal people in the village in many a tribal tract has changed in the mean time. He has become aware about the iniquitous nature of the System. He is confident about the 'competence' of the community to manage its affairs. And he is also asserting unequivocally the natural*

right of the community over the natural resources in the habitat. These elements comprise the quintessence of a truly democratic polity.

'*Taming The Transition*', therefore, is being presented in this new milieu with a clear warning for unilateral action from the people's side, along with the *Second* Report of Bhuria Committee on Municipalities, that is, the institutions of self-government in urban areas.

The circumstances for this presentation are about the same as in 1995. The 74th Amendment of the Constitution concerning Municipalities is by now a part of history. It was passed in 1992. The Scheduled Areas were kept out of its purview. As was done for Panchayats earlier. In this case also, the Parliament was supposed to extend the provisions concerning Municipalities in Part IX A of the Constitution to these Areas within a year. But nothing happened. The Central Government was, however, obliged to appoint the Bhuria Committee in response to the people's demand. The Committee presented its Report in 1995. But once again, no action has been taken so far. *No one appears to be even aware that the application of the State Laws to the urban bodies in the Scheduled Areas is unconstitutional. All urban areas in the Scheduled Areas are being managed without any authority of law.*

This may appear to be strange. But it is not so. It is merely a glimpse of the general state of confusion prevailing about almost every thing of real concern for the people. The islands of some order can be found only where the community is still managing its affairs. So far as the Establishment, which is supposed to run this country, less said the better. The left hand does not know what the right hand is doing. When the rulers are forced into a situation where they may have to deliberate on some people-centric policies, the result is what we are witnessing in the Scheduled Areas.

A major point raised by the Bhuria Committee related to this *ad hocism*. Moreover, the moment a person comes to occupy a position of authority in the System, he acquires oracular aura with little concern for other views and even the final goals. *We have, therefore, now the dubious distinction of having a System which,*

so far as the people are concerned specialises in a negative-sum game or may be, even for the nation as a whole. In this case each actor at the end of the day may congratulate himself for doing a 'perfect' job. Yet the sum-total of their collective efforts may be a simple disaster for the people. Thus, in this arithmetic

$$1+1+1+1+1 \dots = -1$$

This is what has happened in the case of tribal development. A **BIG ZERO** in their case could have gone down in history as a great achievement.

So, the Extension Act has come into effect. It has created a new fervour no doubt. But the credit for that goes to other factors, not to the Establishment. For example, a state like Jharkhand (part of erstwhile Bihar) has yet to enact a state law to implement the Extension Act. Countless laws of both the Centre and other concerned States remains to be amended so that they are in harmony with the spirit as also the letter of the new law. Even a state like M.P. which so far as adaptation of laws is concerned, is supposed to be in the forefront in the country, has faltered on other counts. It has ignored the issues of scheduling of left-over tribal majority areas and administrative reorganisation of the tribal tracts, the two major recommendations of Bhuria Committee. They are vital for making amends, albeit too late and partial, to the historical injustice to lakhs of tribal people who have been denied even the benefit of protection. The situation in other States is much worse.

One of tasks the which Bhuria Committee had addressed itself to was about harmonising the various provisions in the Constitution such as the provisions of the Fifth, the Sixth, the Eleventh and the Twelveth Schedules and relevant Articles. The Committee was of the view that the way the rural and the urban areas are treated as two totally different identities is not correct, particularly in the Scheduled Areas. In fact, the Fifth Schedule concerns the totality of administration in the Scheduled Areas, leaving no facet of people life outside its purview. Therefore, it automatically covers all institutions, urban and rural, in the concerned area. *The Second Report of the Committee concerning urban bodies was, therefore, considered by the Committee as a supplement to the First Report concerning Panchayats.*

In the comprehensive frame visualised by the Committee, 'autonomous district' plays a pivotal role in ensuring that the community at the village level and its tradition including its command over resources are fully honoured. It was, therefore, recommended that the Autonomous District Council at the district level, in the case of the Scheduled Areas, according to the Report, will be responsible for the administration of the entire district. Accordingly Section 4(m) of the Extension Act envisages that

The State Legislature shall endeavour to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Area.

In fact, here is a vital difference between the scheme of the Fifth Schedule as reinforced by the Extension Act and the Sixth Schedule. This formulation honestly implemented will provide a reasonably good frame for achieving the Constitutional objectives

It may be mentioned here that Part IX and Part IXA have not been extended to the Sixth Scheduled Areas which have been kept outside their purview like the Fifth Schedule. Neither the Parliament nor the Union Government have deemed it necessary even to appoint a Committee for reviewing the situation as recommended by Bhuria Committee.

The million dollar question which we are trying to ask and also suggest a possible answer in this booklet is as to why the Establishment is maintaining conspiracy of silence on these vital issues.

The provocation for the present publication has also come from a court verdict. The Hon'ble Supreme Court in a historic judgement concerning grant of leases in Andhra Pradesh (*Samatha versus State of A.P.*) have held that the grant of lease of any description in the Scheduled Areas to any person, individual or juridical, other than a tribal, is unconstitutional.

The judgement came in 1997. The governments at the Centre and in the States have paid no heed to the directions of the Hon'ble Court to work out an appropriate scheme for the use of natural resources in harmony with the tribal rights over the same, which are implicit in the schema of the Fifth Schedule and other provisions of the

Constitution. Instead, they have been trying to get some modifications in the directions of the Hon'ble Court. Their requests were finally turned down in May 2000. *The reaction of the establishment both at the Centre and in the States has been predictable. Change the laws including the Fifth Schedule if necessary!*

The reason is simple. Our country has got into a terrible debt trap. We are obliged to borrow even for servicing that debt, that is, payment of interest and instalments due. One cardinal principle in money-lending is that advance is given depending on the *haisiat* of the borrower. The *haisiat* of a country to a great extent is related to its natural resources. Therefore, it is obvious that the 'benevolent' Shylocks, while making liberal advances even without asking, have their eyes set on the resources of our country. The richest amongst these resources are located in the Scheduled Areas. So if the verdict of the Hon'ble Supreme Court is honoured, all calculations, open and insidious, of the 'benevolent' creditors as also our rulers will get up set.

The problem is that what the Hon'ble Supreme Court has done is just to point out that the State while managing the natural resources in the Scheduled Areas, so far has been violating the provisions of the Constitution. Thus the command of the tribal community in its habitat is non-negotiable even legally. This premise is a part of the basic structure of our Constitution. It is now a part of the established law of our country that the basic structure of our Constitution cannot be tempered with. Moreover, the basic premise of community's command over natural resources in the Scheduled Areas was made explicit and acknowledged by the Parliament itself when space was created in the Constitution for community and its tradition *vide* sections 4(b) and 4(d) of the Extension Act. The community is *swayambu*. Its command over the resources in the habitat is natural and intrinsic to its very **BEING**.

The move of the rulers to amend the laws including the Fifth Schedule, therefore, is based on the mistaken premise that the natural rights of a people are artifacts of law which can be made and unmade in the grand halls where the so-called people's representatives gather occasionally. These provisions, as Gandhiji said about the Indian Independence Act, are 'merely a courteous reflection' of the ground reality duly acknowledged by all concerned. Even if the relevant lines in the

concerned laws were erased from the statute books by some insolent rulers that would make no difference so far as the people are concerned. The community and its command over resources will remain unaffected.

The disastrous consequences to the tribal people in the wake of opening up of their habitat in the name of development, particularly with the establishment of industrial and mining complexes, were discussed in detail by the Bhuria Committee. Disorganisation, displacement and destitution have been taken as the ordained consequences for the simple people caught in the whirl of change. No one has cared even to note that in the process the Constitution itself is being trampled by the very same State which is responsible under the very same Constitution for their protection, welfare and advancement. A comprehensive frame for guiding the processes of change, particularly when alternative use of resources is involved, such as in mining and industrial activity, has been recommended by the Committee. There is no option open to the State but to accept with good grace the hoary tradition of the community's command over the natural resources as its natural right and plan the strategy of development with that premise as the inviolable *Lakshman Rekha*.

A new institutional frame will have to be created forthwith for what has been described in the Report as '*community ownership over industry*'. Moreover, the so-called disinvestment in public sector enterprises is blatant violation of the Constitution. It will have to be stopped here and now. The leases granted to the private enterprises must also be reviewed and brought in harmony with the Constitutional mandate.

These measures alone can pave the way for peace and good governance in the Scheduled Areas in the new setting of a non-centralised polity with community at its centre.

New Delhi

01-01-2001

B.D. Sharma

Taming the Transition

The Great Furore

There is furore in the Establishment. The occasion is a simple observation of the Hon'ble Supreme Court :

The Constitution intends that the land shall always remain with the tribal.

There are also concomitant directions to review the policies pursued hitherto, which go against this basic premise, and to ensure that the processes of change in the Scheduled Areas are in harmony with the Constitutional mandate concerning welfare and advancement of the tribal people.

These directions are now about three years old. The occasion for the issue of these directions was a Writ Petition presented to the Court questioning the validity of a mining lease granted to a private company in Andhra Pradesh. The Court ruled in clear terms (*Samtha versus Andhra Pradesh*, 1997) that

'The State Government also stands prohibited to transfer by way of lease or any other form known to law, the Government land in Scheduled Areas to a non-tribal person, be it natural or juridical person...'

Yet, the Governments, both at the Centre and in the States, took no follow up action, except moving the Court, again and again, to review their decision and make amends in their directions. And, when the Court finally refused to make any amends in May this year (2000), the reaction was predictable. The proposed action is not only anti-people but in a way is assertion of draconian authority of the State. This assertion ironically is against a people whose protection and welfare have been entrusted to the same very State by the Constitution. The position is totally indefensible if it is recalled that even the imperial regime had failed to impose its hegemony in these erstwhile 'excluded' and 'partially excluded' areas inhabited by indigenous people.

The governments in Andhra Pradesh and at the Centre in the first flush seem to have opted for the easier course in a regal style-

'Off with Their Heads'

- ordered the King in the Wonderland of Alice.!

'Amend the Laws',

is the cry of our Rulers in the same vein!

Once the base itself is knocked out, the edifice, supposed to have been erected on the same by that errant Court, as per the rulers perception, would collapse like house of cards. They do not realise that this premise of theirs could be wrong. What is more, and crucial, the ground reality in the mean time has totally changed.

The Dilemma

'What will happen to development?' is the war-cry of the rulers in the instant case. The fact that the Hon'ble Supreme Court itself had given an answer to this poser, as in the following, is not even alluded to.

If a person is 'imbued with social zeal and spirit to ameliorate the social status and economic position of the tribals,... there is no prohibition to organise through tribals and a cooperative society composed solely of tribals,... actions to ameliorate socio-economic status of, tribals in the Scheduled Areas....'

Why should the actions of a real philanthropist be subject to the condition that the land which is sacred to the people and belongs to the community should get transferred in his name? It not only hurts the deep-seated sentiments of the people but creates fissures in the impregnable wall of their tradition which has protected them through the ages! The same holds with greater force for the State. If there are rich mineral resources in an area, they can 'be exploited through an appropriate scheme... by the

tribals themselves.' A suitable institutional form can be worked out which ensures that the welfare of the tribal people remains at the centre. The people can no longer be swept aside as unwanted rubble from resource-rich regions. A situation cannot be allowed to be created in which the tribal people can, at best, occupy some place in the substratum of the new system, that too for the sake of form and for a few and the rest are left to fend for themselves and perish. This has been the other side of development so far, which cannot be accepted in a truly democratic society.

Attack on Basic Structure?

It is this ugly reality which was tested against the intention of the founding fathers and specific provisions of the Constitution including the Fifth Schedule, International Conventions *et. al.* by the Hon'ble Court. It has proved to be patently untenable. Therefore, what the Court has done in its directions is just to mention certain boundary conditions for future action. They are as clear as the day light, should one even casually glance through the Directive Principles, the Fifth Schedule and other provisions in the Constitution. The fact that these provisions are an integral part of the basic structure of the Constitution has also not been appreciated. This itself speaks volumes about the level of sensitivity of our Executive and their utter obsession with development at any cost. The provisions in the Fifth Schedule of the Constitution are so basic that this Schedule has been described as 'a Constitution within the Constitution.' Para 5(1) of this Schedule concerning 'Laws Applicable to Scheduled Areas' begins with the **non-obstanate** clause 'Notwithstanding any thing in this Constitution.'

The provision in Para 7 concerning the amendment of the Fifth Schedule by the Parliament can, therefore, by its very nature, concern only the routine and formal matters. By no stretch of imagination, it can be deemed to be an authorisation for demolishing the very basic structure created for the tribal areas in the Constitu-

tion. It is a pity that the rulers have been used so far to meting out casual treatment to ordinary people even in vital matters because the people at the receiving end really did not know what is happening.

People against State

Here is a vital difference now in people's understanding and perception. The things have radically changed. Firstly, this issue about command over resources has come to the fore and in the right perspective too, in the tribal areas after about half a century of utter confusion. Almost every one, including ironically the State itself, has been a privy to this confusion. It may be recalled that all struggles of the tribal people in these areas now for more than three centuries have been centred around the command over the resources in their respective habitats. The legendary Tana Bhagats of Chotanagpur in Jharkhand had raised the banner of revolt more than two centuries back against the State with a clear declaration :

धरती भगवान ने बनाई
हम भगवान के बेटे
सरकार बीच में कहाँ से आई?

God Created the Earth

We are children of God

Pray, Wherefrom has the Government Appeared?

Even though the stand of Tana Bhagats was not formally conceded, because it would have demolished the very foundation of imperial authority over natural resources, further confrontation with the tribal people was averted by declaring their areas as 'excluded areas' or 'partially excluded areas' depending on the local situation. *This formalisation of exclusion in the imperial record was of no concern and had no meaning so far as the tribal people were concerned. They perceived the new situation merely as an event of cessation of hostility between themselves*

and the British. But the Chariot of Empire continued to move on relentlessly. The lands of Tana Bhagats were auctioned for non-payment of 'revenue'. Their point was, however, conceded after independence. The lands held by them were declared revenue-free. Yet the auctioned lands have not been restored to them to this day even after the formation of Jharkhand State. Their struggle is continuing.

The 'exclusion' of tribal areas from the general frame of administration was vital for the tribal people. The most important imprecation was that the community at the village level continued to manage all its affairs including the natural resources according to its customs and traditions. This was in sharp contrast with the situation in general areas after the takeover by the British. In their case the community was rendered *non-est*, that is, it did not exist in the eyes of law. All its functions were taken over by the State to be performed by its departments or agencies.

The tragedy is that these very anti-people laws not only continued in the general areas, as they were, even after independence but got extended to the erstwhile excluded/partially excluded areas automatically with the adoption of the Constitution on January 26, 1950. Some of these areas were redesignated as Scheduled Areas. This vital change was effected without any one caring to know what it was all about or what it meant to the people. The failure to create space for village-self governance in the legal frame notwithstanding Gandhiji's vision and specific verdict in its favour in the Constituent Assembly while adopting Article 40, was a Himalayan blunder. We are paying its price to day in the whole country. But in the case of tribal people, that negligence at the time of adoption of the Constitution proved to be *a Himalayan crime against the tribal people*. It marked the eclipse of their virtual self-governance and beginning of a new era of confrontation between the people and the State. This happened ironically under a republican edifice dedicated the ideals of equity, liberty and fraternity.

Deepening of Confrontation

Decades rolled by without anyone attending to the root cause of this confrontation. Exclusion of the community and its tradition from the System rendered every activity of the tribal people violation of law attracting penal action by the State. The people became '*intruders*' in their own forest homes. *Their very right to life with dignity got annulled by the State by a simple but slimy act on its part, that is, non-recognition of their natural right over the resources in their habitat.* It happened notwithstanding the poetry of Panchasheel and the ritual of fundamental rights under Article 21. The natural response of the children of nature in defence of their natural rights have been taken by the System as an affront to the authority of the State. The state on its part failed to shed its imperialist character. It has doggedly refused to imbibe the democratic spirit. It has become an agent, in due course *dalal*, of global capital donning the tantalising garb of so-called development.

What followed in these areas caught in this whirl of change was a holocaust, pure and simple, for the tribal people. Millions have been displaced forcibly. Destitution and decimation have become order of the day. It is clear that there could not be an easy 'takeover by the System of their territory'. There was resistance and even open revolts. Many a project for so-called development had to be abandoned in many areas. Brute force, with all sorts of machinations at all levels, has been used simulating the situation of a veritable war against the people with no holds barred. Resistance in the Narmada Valley against the onslaught of the State has been the longest so far.

Building from Below

Even though the ruling elite could not come to terms with the natural rights of the tribal people, the determined assertion, the growing confrontation and the logic of the principle of self-governance underlying the people's assertion did yield some results, though with considerable time-lag. It was clear that Panchayati raj in the tribal setting was bound to accentuate the confrontation between

the people and the State because the confrontation would reach their very door steps with the establishment of Panchayati. The Panchayats are after all basically an extension of the formal state apparatus.

The first essential condition for peace and good government in the tribal areas, therefore, would be to build from below on the strong foundation of community life, which is still strong and vibrant in the areas. The logic was accepted in late eighties in the course of deliberations at the national level about according Panchayat Raj Constitutional status and incorporating detailed provisions for Panchayats in the Constitution. Later, at the time of enactment of Part IX concerning Panchayats, the provisions were not extended automatically to the Scheduled Areas. The responsibility to extend the said provisions to the Scheduled Areas, with suitable exceptions and modifications, was assumed by the Parliament itself. *Incidentally it was the first Act in the legislative history of India, which did not automatically cover the Scheduled Areas in the country.*

The same approach and similar provisions were made in Part IX A of the Constitution concerning Municipalities.

The commitment to make special provisions for the Scheduled Areas even on the part of the Parliament, however, remains only partly fulfilled to this day. In fact, *resistance against people-centred change, which was implicit in this special dispensation, developed in the System from Day One.* There was a plea on the part of Central Government itself that the Governor, in the case of each State, is competent to adapt even the constitutional provisions in Part IX using his powers under Para 5(1) of the Fifth Schedule. The States on their part generally remained totally oblivious about these developments. They did not even care to note that the provisions of Parts IX and IX A concerning Panchayats and Municipalities did not cover the Scheduled Areas.

Accordingly, the concerned States proceeded with enactment of laws about Panchayats and Municipalities in usual style

covering the entire State and establishing institutions in accordance with those provisions even in the Scheduled Areas. This action concerning the establishment of Panchayats, even though the provisions of Part IX had not been extended to the Scheduled Areas, was struck down by the A.P. High Court in 1995. The Hon'ble Court ruled that the general provisions of Panchayats Acts could not cover the Scheduled Areas until the Parliament extended the same as envisaged in Article 243 M(4)(b).

The Parliament, therefore, had to extend the provisions concerning Panchayats to the Scheduled Areas in 1996 through 'The Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996' (*The Extension Act.*). It paved the way for the State legislatures and the Governments to take necessary measures in accordance with these provisions. It was expected that confrontation between the people and the State would relent in these areas as the logic of real self-governance unfolds.

The follow-up action at all levels in respect of operationalising the Extension Act has been tardy and uninspiring which we will discuss in the following. It may, however, be noted that the Union Government themselves have remained totally unconcerned about it after passing the legislation concerning Panchayats. It is clear that the enactment was not an expression of its commitment to the cause. The Government had to pass it under duress of the Court's verdict referred to above and growing resentment amongst the people and their assertion. It was a ritual well done, they think.

Urban Bodies *Ultra Virus*

Rituals cannot bring about basic change in one's perception. It appears that the concerned Governments are not even aware that the situation in respect of all the urban bodies today in all Scheduled Areas throughout the country is the same as was in the case of Panchayats before the coming into force of the Extension Act. *All laws concerning municipalities, under which municipalities have been constituted and are currently func-*

tioning in the Scheduled Areas are ultra virus of the Constitution. The reason is simple. Part IX A concerning Municipalities, as it is, is not applicable to the Scheduled Areas vide Article 243 ZC. And the Parliament has not cared to extend the same with suitable exceptions and modifications as per the responsibility which it had assumed on its own, vide clause (3) of Article 243 ZC.

This situation is rather strange and needs some explanation. After the initial ambivalence about the responsibility of Union Government to initiate legislative measures for extending the provisions concerning Panchayats and Municipalities to the Scheduled Areas, it was obliged to appoint a Committee of select Members of Parliament and Experts (Chairman : Dileep Singh Bhuria) to recommend suitable exceptions and modifications in the provisions of Part IX in its application the Scheduled Areas. The same Committee, with some changes, was asked to make recommendations in respect of Part IX A concerning Municipalities. The Report of the Committee concerning Panchayats was submitted on 17.1.1995 and the Report concerning Municipalities on 19.7.1995. While some action has been taken in relation to Panchayats, the Report concerning Municipalities has been gathering dust in the Ministry.

The result in that urban affairs through out the Scheduled Areas in the country are being managed without authority of the Constitution. There is, thus, callous unconcern on the part of the rulers. There is studied 'abstinence on the part of Parliament.' And there is simple ignorance on the part of those who are really concerned.

This unfortunate combination needs an explanation and serious consideration on the part of those who are really concerned about certain basic values in the national life and Constitutional mandates.

The Basic Premises of the Extension Act

Let us look at the Extension Act. It begins with the community at the village level, which is a natural entity and not an artifact of law. This community is obviously a self-managing system governed by its own customs and traditions. Two aspects of community life are intrinsic to its very existence and identity, viz., a system of dispute resolution and command over the resources on which the members of the community, severally and collectively, depend for their living. All these facets are intrinsic to the very existence of community and its functioning. They are natural endowments. They are self-created and not a gift of any outside agency including the State.

The perception about these aspects of their life so far as the simple people, particularly the tribal people are concerned, is clear. The reason is simple. In their case, the se elements comprise the reality in which they are living. The people do not need any artificial props of any description, of law or of religion, in support of their personal experience. The village, which comprises the community, obviously precedes the State. The State appeared on the scene much later. The tribal people belong to the 'des' in which they are born. The respective habitat of each community, on which it subsists, is well defined by their tradition. So far as the governments of the day are concerned, it is the people who cast their vote and 'make' them rather than the other way round. ***The 'maker' is always the master, not the artifact which the maker makes.***

The above premises are natural. Therefore, only these premises can comprise the strong foundation of a really democratic polity. And the Extension Act has been built around these premises keeping in view the two clearly defined objectives, namely, (i) building the system from below with the living system of tribal communities as the foundation and (ii) ending the confrontation between the people and the State. And, here we are and have a unique provision in our country's law in Section 4(d) of the Extension Act :-

Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.

It is important to note while dealing with Gram Sabha, which is people's own institution and formal expression of the community at the village level, that it is *swayambhu*. The proposition of Section 4(d) merely records the 'competence of that *swayambhu* Gram Sabha.' It creates space for that living organic body in the man-made structure of law for managing the System known as State.

This provision is a radical departure from the provisions concerning self governance in Article 40 and later in Articles 243 G and 243 W. In the case of latter, the State or the Legislature, as the case may be, is expected to '*endow*' on Panchayats and Municipalities such powers and authority as may be necessary for enabling them to function as institutions of self-government. The position in the case of Gram Sabha is totally different. It is an institution of self-governance with natural mandate. The powers and authority have not been endowed on it by the State or a Legislature.

So here we are. The command over resources in the Scheduled Areas is a natural right of the community. It has not been endowed by the Constitution. This provision in the Extension Act merely records the natural right. It may be added here that this provision, which has been made explicit in the Extension Act, *which it may be remembered is an integral part of the Constitution, does not add a new proposition.* The premise is implicit in the Fifth Schedule of the Constitution, which is concerned with the administration of the Scheduled Areas of our country. In fact, this spirit, made explicit for the Scheduled Areas, is not limited only to that tract. It informs the entire political economy of Indian Republic whose boundary lines have been set out in the Constitution.

The Hon'ble Supreme Court has taken note of the provisions of Extension Act while dealing with the scope of the Fifth Schedule. It has made the intension of the Constitution in general and the Fifth Schedule in particular explicit and specific.

Bewildered Establishment

The ruling elite, including the political establishment, has been rather slow in reconciling with this reality of democratic polity. It is not surprising because that has been ignored for half a century under the cover of imperial laws, some of which have persisted in total violation of that spirit. The surprise and shock of the ruling elite about the implicit change were succinctly expressed by a Hon-ourable Minister in Madhya Pradesh when after a day long discussion about the Extension Act, he raised a simple question :

'Will you please tell us that what role will all of us have who have gathered in this hall, including the Chief Minister, Cabinet Ministers, tribal legislators, senior civil servants, once this law has been honestly implemented?'

The message is simple and clear. The imperialist frame of governance will wither away as it should, once the spirit of the Extension Act is imbibed by the System. It is unfortunate that the imperialist legacy has remained intact and got reinforced after independence.

The adaptation of laws, as mandated in the Extension Act, has been tardy in the case of State laws and a non-starter in the case of Central Laws. And this is notwithstanding the fact that the Governors of the concerned States have full and unqualified powers to do so. Under Para 5(1) of the Fifth Schedule the Governor can 'direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area..... or shall apply..... subject to such exceptions and modifications as he may specify in the notification.....

Nevertheless the message of the Extension Act has spread fast in the tribal areas because it *merely states what exists and is*

an expression of deep-seated aspirations of the people. The people are, therefore, asserting their natural rights quoting the law and the Constitution, which the officials are duty-bound to follow. The administration, however, is sticking to the old frame on the plea that they have not been told so by their Government officially. The whole edifice of the imperial system acquired validity throughout the length and breadth of our country on two slimy premises, viz., (i) whatever has been published in a Gazette is deemed to have been communicated to every one in the country and (ii) ignorance of law is no excuse. How can the officials in the System, therefore, take protection under the plea of 'ignorance of law' on their part in this case? If that is so the people can retaliate and reject on the same plea the entire legal edifice of the country for no one really knows it nor any one has ever been told about the same.

People's Declaration

Law or no law, adaptation or no adaptation, the awareness about the community's natural right over the resources in their habitat, as also the emphatic assertions in simple terms are sweeping the tribal tracts through out the country, such as,

'Hamare Gaon Mein Hamara Raj'

(Our Rule in Our Village),

'Jal, Jangal, Zamin Hamare Hain'

(Water, forest and land are ours).

The assertion are also defiant. The people are rejecting the superimposition of laws which negate that basic right which they have been enjoying through the ages in very simple terms:

'Kagaz Tumhara Zamin Hamari' -

"You may please yourselves with your laws but the land, that is, the resources are ours."

And the Challenge

Thus, the message from the people's side to the rulers in the context of proposed amendment in state laws and in the Fifth Schedule is clear, sharp and unambiguous -

- * *Let the concerned Chief Ministers* please themselves and amend the relevant laws in their States.
- * *Let the Prime Minister* enjoy ecstasy about the '**Grand Vision**' and remove the 'hurdles' in achieving the same by amending the Fifth Schedule.
- * *Let even the most unlikely event happen, like darkness engulfing the sun at noon, and the Hon'ble Supreme Court* revise their verdict!

All these actions, even when clubbed together would not change even by an iota the people's position about command over resources. Because the command that people enjoy is natural and ordained by God himself, should one so please.

We are happy that this natural right of the people finds affirmation in the laws of our land, in our Constitution including the Fifth Schedule and the Extension Act and also in the verdict of the Hon'ble Supreme Court.

- * **But EVEN THEN it needs to be reiterated that that right does not depend on these provisions or affirmation.**
- * **The '*competence*' of the community is there in its pristine form in the Extension Act. But it cannot disappear even if it is erased from that Act.**

It will be necessary at this stage to remove the impression that the new wave sweeping the tribal areas has emanated from and depends on the Extension Act. However, its contribution to the confidence gained by the people cannot be denied. It may be recalled that the tribal people have never got reconciled to the State's

interference with their rights over land and forest. All tribal movements have and continue to be centred around that issue. The takeover of their lands for industrial and other purposes in the wake of new inroads has been resisted every where, tooth and nail. It is another matter that the people did not always succeed in standing against the might of the State. Moreover, the State, represented by its officials, also remained oblivious about this aspect of natural rights of the people. In fact, they even ignored the Constitutional mandate and their own Constitutional obligation to protect them, which are clear and specific, under the cover of incongruous laws. They went about like zealots even forcing the risk of decimation on the vanquished.

The people on their side have met this challenge with the solemn resolve of *``katenge par hatenge nahin"* (We may be slaughtered, but will not move out). Consequently, many a development project had to be abandoned. The people in Narmada valley have been facing the challenge, again with a resolve for *jal samadhi* (Embracing Death in Water) notwithstanding the adverse verdict of the Supreme Court.

The verdict of any Court, by its very nature, can touch the formal or what is supposed to have been endowed by the State, and not the natural, as the people are asserting.

Betrayal of Trust-Again and Again!

It is unfortunate that 'natural' struggles of the 'simple' people for their 'natural' rights have been portrayed as anti-development, or as acts of stone-walling the majestic highway of national development. This high way necessarily has to traverse through the hitherto unexplored remote tribal regions for the simple reason that they have the resources needed by the modern world for its development. *But survival, and that too with dignity, has to be the first essential and non-negotiable condition of any development in any System which has any concern for basic human values.*

It was on account of deep concern for this crucial human facet of tribal situation that the Founding Fathers kept tribal affairs, particularly the affairs of Scheduled Areas, outside the pandemonium of political arena. They reposed full trust in the Executive headed by the Governor and the President. It may be remembered that the Governors and the President take the oath to 'preserve, protect and defend the Constitution' (Articles 159 and 60 respectively) at the time of assuming their offices. This oath is unlike all others who only bind themselves to 'faithfully discharge duties..... in accordance with the Constitution' (Third Schedule). It is in this frame of reference that Governor has been endowed with extra-ordinary, nay draconian powers under the Fifth Schedule referred to earlier.

The Executive unfortunately failed to rise to the great expectation of the Founding Fathers. As stated earlier, the dawn of independence for the tribal people marked virtual eclipse of their tradition and total darkness around, which remained unnoticed and unappreciated for a long time. The Scheduled Areas and Scheduled Tribes Commission (Chairman : Shri U.N. Dhebar), which was appointed in 1960 under Article 339 of the Constitution to assess the tribal situation after 10 years of its commencement, was so much swayed by the imperatives of development that it accepted in principle that some risk will have to be faced by the tribal people as development informs these areas. What this 'some' risk means can be any body's guess. A measure that may totally destroy a people can be cleverly portrayed merely as a risk. In any case, the Commission, thus, dispensed with the concept of full immunity to these people during the crucial phase of change pressed from outside, which the State was duty bound to provide.

The Commission further made another fateful recommendation that special provisions of the Fifth Schedule were really not necessary.

A Grand Strategy Rendered Dysfunctional

The situation in the tribal areas, therefore, continued to deteriorate unabated. The simmering discontent of early days started erupting in the form of open defiance of law and by early seventies even revolts in many areas. A new policy frame was, therefore, attempted as a response to that crisis. This policy is popularly known as tribal sub-plan approach. Elimination of exploitation was given the highest priority in this frame as an immediate task. Building the inner strength of the community came next in the priority list with a long term perspective. Accordingly, the Fifth Schedule was brought back to the centre of the stage for providing effective protection to the tribal people in the wake of quickening pace of economic development under tribal sub-plans.

In pursuance of the new policy, stringent boundary conditions were set out for tribal development in the Guidelines of the Government of India. It was particularly so in respect of all sorts of modern economic activities in these areas including mining and establishment of industries. For example, in the case of Malanchkhand Copper Project in Balaghat, M.P. clearance was given by the Government of India in the year 1975 subject to certain clear conditions. It was envisaged that the Project shall make adequate provision not only for those people who lose their land in the core area but also for all those who are located in the '*zone of influence*' of the industrial centre. Moreover, these human concerns and obligations had to be accepted as an integral part of the industrial project and not a mere adjunct.

The same Guidelines of the Government of India envisaged that no project could be taken in an area where the very survival of a people may be likely to get jeopardised.

This strategy, so far as the focus on protection and operationalisation of the Fifth Schedule are concerned, proved to be a non-starter. Even the process of making the tribal sub-plan areas and the Scheduled Areas coterminous got stuck in early eighties. It has remained so till this day. *Not a single Regulation has*

been made by any Governor in any State, for peace and good governance of the Scheduled Areas, which is the central theme of the Fifth Schedule. It may be recalled that the Governor is supposed to be the sole legislator for the Scheduled Areas. The torrential flow of funds, which started under sub-plan formulations, therefore, resulted in unprecedented backlash of development on the tribal people of development. The simple tribal simply got perplexed in the face of all sorts of fortune seekers who flooded these areas in the wake of that adventures of development. The reaction against this backlash in due course became very sharp. It has assumed unpredictable forms including armed struggles in defence of their natural rights by the people, which were being brutally trampled by the State and its agencies as also the new *mafia* which has struck roots in these areas.

Mavalibhata Declaration

Some of these struggles have challenged not only the authenticity of the picture of development presented in the disputed projects such as by those in Narmada Valley but the very paradigm of development itself. For example, 'electricity for what?' is an equally valid, perhaps more important than the concern for starting new power projects particularly in the face of ecological collapse which is haunting the mankind. *So far as the use of natural resources is concerned, Mavalibhata Declaration (Bastar, Chhattisgarh) can be said to be a land mark. It takes the proposition of the community's command over resources to its logical conclusion.* This declaration was neither an empty slogan, nor was it put forward in a mechanical way. It was presented after prolonged deliberations taking serious note of certain basic premises and human values involved in the process of structural transformation.

The basic question, which has been posed is Mavalibhata Declaration, is that *with what sense of justice can the State expect the proud tribal people, who have enjoyed undisputed command over the resources in their habitat, to make way for*

a new venture and accept the place of a casual wage-earner, that too at the sweet will of an entrepreneur simply because he has some 'paper pieces' to invest? The people of Mavalibhata were not prepared to accept that ignominious fate. They therefore, declared that the community's command over all affairs in their traditional habitat including industrial enterprise, howsoever big and complex, is non-negotiable. Incidentally they were affirming in pursuance of their simple logic concerning their natural right, *which is ignored by the rulers*, what has been accepted in various International Conventions concerning tribal and indigenous people. It is also implicit in the Fifth Schedule of the Constitution, now clearly stated by the Hon'ble Supreme Court in their judgement referred to earlier.

The propositions in concrete terms put forward in Mavalibhata Declaration are simple -

- (i) **Not less than 50% of the shares in any venture shall be in favour of the community, to be suitably defined once the principle is accepted. These shares are just token of due recognition of the community's command over resources. They can be deemed to be in lieu of the permission given for the use of the resources by the community to the venture and not, repeat NOT against financial investment.**
- (ii) **About 10% of the shares will be assigned each to the people who lose the land and to the labourers employed in the venture.**
- (iii) **Not more than 30% shares shall be assigned to those who contribute capital.**

Community's Command and Its Implications

Once the ownership is with the community, all the possible issues which have been plaguing the process of industrial development in the tribal areas should get resolved. No community can

opt for ecological disaster in its habitat. Nor can it allow obnoxious pollution which destroys the very basis of healthy and happy life. The technology cannot be allowed to be dictated by its profitability to the venture. It will have to be responsive to the need of gainful employment of the people in the area.

There is no doubt that with such stringent conditions the rate of return on capital will be low. But that rate will reflect the real worth of the venture and not an inflated profile as is the practice now. These high profiles rest on expropriation of all descriptions including ecological damage and human costs which go unrecorded and unappreciated. In the Mavalibhata formulation, a share in the net profit of the industry will automatically accrue to the community and other concerned people by virtue of the assigned shares. Those who make financial investment will get what is really due to them cutting through all sorts of subterfuges which, in the mean time, have become the order of the day particularly as the State itself became an interested party.

It is clear that only a scheme based on the above premises can be said to be in consonance with the Constitutional values as also its specific directions, such as those in Article 39. It will also honour the spirit of the Fifth Schedule concerning protection, welfare and advancement of the tribal people.

The Trauma of Transition

The basic issue about command over resources is simpler in a static frame where the nature of their use remains unchanged. It becomes complex when the nature of their use changes qualitatively. The well-known examples in the history of mankind are changeovers from 'gathering and hunting,' to pastoral, to shifting cultivation, onto settled cultivation, as the basis of peoples economy. Even the change from non-irrigated to irrigated agriculture may be so big or may be like a quantum jump for a simple people that they may not be able to manage the transition. From agricultural to non-agricultural uses of resources, such as mining, industrial or commercial, again

comprise a drastic change. It may be beyond the capabilities of the people located at an earlier stage of development to handle these changes. It is here that the significance of planned change under the aegis of the State becomes paramount particularly in the case of simple societies like the tribal people.

As we have seen earlier the protective aspect in the process of development in our country has not been effective. The State in particular has miserably failed in discharging its Constitutional obligation towards the tribal people. The greatest damage on this count has been done in the very beginning after independence by an innocuous-looking omission, that is, exclusion of community at the village level and its tradition of self-governance from the legal frame. The Fifth Schedule, which could have been used for undoing this omission, has remained almost a dead letter. As we have discussed earlier, this fateful omission was removed only after about half a century in the wake of 73rd Amendment of the Constitution while extending the provisions of Part IX to the Scheduled Areas through the Extension Act. However, much water has flown under the bridges of Jamuna in this long period. Moreover, the rulers are ill-at-ease with the premise of a non-centralised polity implicit in the Extension Act compared to the total centralisation inherited from the colonial era and reaffirmed after independence. In this case, community in the form of Gram Sabha has been brought to the centre, along with a *magna carta* concerning its competence to manage all its affairs.

But these provisions concerning Panchayats can help in consolidating the command of the community over its habitat only in the rural setting. Moreover, the task is easier there because in many cases, the processes of change have either not reached these areas at all or are in a nascent stage. On the other hand, even determined efforts to check adverse forces in some cases of fast or large changes may remain totally ineffective. The well-known examples are centres of trading and local administration. Many of the rural areas, where damage has already been done, in the mean

time graduate to urban status like that of a municipality or a corporation in a mechanical way. In this change over, the community in the form of Gram Sabha loses its formal authority. Since vested interests have already consolidated their hold in these areas, the problems become extremely complex and difficult to handle.

The situation in the tribal areas, thus, is not static. A number of rural areas are in the process of urbanisation with varying intensity. In those cases where alternative use of resources is planned in a big way, such as establishment of a steel plant or starting of mining operations, the change is bound to be sudden and drastic for all those directly affected, particularly those whose lands may be taken away. But those who are not directly affected, but are located within the zone of its influence, may have a worse fate. The change in their case may not be sudden. But they may have to make way, gradually or in stages, to powerful economic forces let loose in these areas with no claim even for compensation. These processes should ideally be regulated by the State. But at the moment, the State ironically itself has become an interested party either directly as in public sector enterprises or indirectly as promoter of so called development. As stated earlier, *the community here is totally helpless. The State, which is its protector, assumes the role of a predator. The community stands excluded from the legal frame which has the effect of transforming the exercise of its inalienable right of self-defence into an offence against the State giving legitimacy to all acts of state violence and repression.*

State versus Market

Even though the new provisions in the Constitution concerning Panchayats in Part IX and Municipalities in Part IX A envisage endowment on the Panchayats and Municipalities necessary powers and authority concerning 'the preparation of plans for economic development and social justice' as also implementation of various schemes, the situation at the national level has drastically

changed. *Liberalisation and globalisation have been accepted as basic premises for the management of our national economy. It implies conceding centrality to the market forces. The State naturally assumes the role of a facilitator of those forces. This role of state is in total contrast with its role of a protector and promoter of tribal interest. The role of promoter and protector has to be, by its very nature, primarily against the free play of market forces, besides eschewing the possibility of any use of muscle power.*

It is unfortunate that this aspect has been totally ignored in the euphoria of jumping into the 21st Century. There is not even an allusion to the implications of globalisation and liberalisation for the welfare of tribal people, let alone a clear policy statement in the context of valuable experiences spread over half-a-century after independence discussed in detail earlier. On the contrary, what we find is *a proposal to amend the Fifth Schedule to remove the hurdles in the free play of the insidious market forces. This is not only a serious violation, but virtual abrogation of the Constitution so far as the tribal people are concerned.*

The Contrived Dilemma

It appears that non-action in this vital matter so far has been due to the ambivalence about tribal affairs which has plagued the System. *The State is currently faced with two anti-podal roles. One role has been bestowed on it by the Constitution itself about protecting and promoting tribal interests against forces of money and muscle power, exemplified by the market. The other role is self-ordained, that is as a facilitator of free market economy under, what is now clear, the diktat of the neo-imperialist capitalist global Axis.*

The issues involved in the process of urbanisation naturally came up for detailed discussion in the deliberations of Bhuria Committee. Certain far-reaching recommendations have been

made. But there has been no overt response to these proposals from the System so far. It may be recalled that the State was forced to act on the Panchayat-front, because it was faced with people's assertion on the one hand and the Court's verdict on the other, declaring Panchayat Act of Andhra Pradesh as *ultra vi-*
rus of the Constitution. In the case of urban areas, where the tribal people are inconsequential, having been gradually pushed out, the question of effective assertion on their part by themselves simply does not arise. Nor the issue has been taken so far to the Court by any party. **The Union Government in this situation have preferred to adopt a policy of studied silence even though that non-action related silence on its part is open violation of the Constitution.**

Of Whirls and Eddies

stated earlier, the process of change, from traditional village economy to modern urban economy can be either gradual or mutational. The process, however, has been generally gradual so far. Therefore, it did not allow significant resistance from the people's side to build up. In the case of a mutational change, however, there is invariably tremendous opposition from the people's side as also notable assertion. But all such reactions, as a rule, are suppressed ruthlessly by the State.

There are no doubt some exceptions where the people are able to hold on. But these successes may be more apparent than real. The State or even the vested interests such as the industrial combines may really effect just a tactical ceasefire or even retreat. These tactical moves can get projected as people's victory. The 'enemy' may strike again after a pause, working insidiously in the meantime to create a divide amongst or discover soft spots for attack. *In the global march of market forces, such resistance, even when successful, are accepted by the strategists in a pragmatic-cum-philosophical vein like eddies or whirls in torrential flows, which are carried along without affecting their direction.*

*We in our country are now at the threshold of a new mutational change. The use of rich resources in the tribal areas, unless there is effective intervention from the people's side, here and now, will largely be market-driven with State as a powerful facilitator. The scene of these mutational changes has to be, by virtue of its very nature, the village. The history of temporary turbulence in the grand march of time could have been repeated. But it is here that a new consciousness about natural rights of the community over the resources in its habitat has arisen. This consciousness now is sweeping across the country side throughout the Scheduled Areas with the fury of a tornado. It is spilling over to other general areas as well as in Madhya Pradesh and Orissa. **The people are resolving that they will not allow any outside agency to set its foot within their territory, law or no law. The natural right of the community is above all man-made laws, including the Constitution.***

A Mega Contradiction ?

The stage, therefore, is being set in the Scheduled Areas for an unprecedented confrontation between the people and the State. The issue simply is '*Who is in command? Community or the State.*' It may be recalled that the Scheduled Areas were taken out of the purview of general provisions concerning Panchayats and Municipalities in response to the concern on the part of political leadership for ending a situation of similar confrontation of a much lesser intensity. That confrontation was totally uncalled for because it was largely the result of acts of omissions and commissions of the State itself. The overt object of the proposed changes was to effect necessary correctives in the institutional frame so that a process of building up could start. The people in that case will be able to perceive the State apparatus as an extension of their own System.

The task remains half done in rural areas and has yet to begin in urban areas. It has to be noted that mutational change

in the case of mining and industrial activities begins in rural areas. A state of virtual chaos takes over the area as the rural order gives way to a semi-urban and urban with local people getting uprooted, pushed around and adventures of all descriptions streaming in. The mutation, thus comes to its final fruition in an urban setting.

The legal frame for management in these areas may get totally transformed quietly with a simple government notification. There is sea-change from rural to urban so far as the parameters of governance are concerned. It is a pity that no action has been taken by the Union Government now for more than five years after the submission of the Report of Bhuria Committee which has given a frame for extension of the provisions relating to Municipalities in Part IX A of the Constitution to the Scheduled Areas.

✓ It may be noted that the provisions of the Fifth Schedule cover the entire Scheduled Area, be it a village, a town, a corporation or a special area known by any technical term. *The premise about the community's command over the resources in the Scheduled Areas does not depend on the formal category of a local area. It is valid in the entire scheduled territory whatever may be the formal classification.* While there is hardly any appreciation of this fact, mutational changes have been occurring in many areas. The tribal community in these cases has been forced out, pauperised and reduced to an insignificant minority in their traditional habitat. This has happened entirely due to the neglect of the State.

The claims of the tribal people in the changed urban setting, therefore, cannot be brushed aside on the innocuous-looking ground that the situation has changed. This would mean double injustice to the tribal people, that is, denial of protection by the State at the crucial phase in their life and then making the disability so caused permanent quoting from the scriptures about democracy. The root cause of trouble in a State like Tripura has arisen from this ambivalence and the inability of its leaders to ar-

rive at a reasonable solution in time taking into account the realities on both the sides. A *via media*, therefore, has to be worked out even for those areas where industrial and mining activities are well established and the damage has been done. Any workable solution has to keep in view the two basic facts, namely, (i) the local community has a special claim, and (ii) the clock of history cannot be unwound.

Taming the Transition

The Bhuria Committee on Municipalities presents a balanced perspective. *The basic objective is to tame the transition.* It seeks to make the entire process of development people-centric. Thus, according to the Committee-

Measures should be taken so as to ensure that urban centres located in the Scheduled Area function and develop as growth centres in the concerned region. Their activities should be supportive, in general, of the economic activities and, in particular, of interests of the tribal people in the surrounding areas. They should also provide higher levels of social services, function as nuclei of diffusion of scientific temper and enrich cultural life of the region.

The Committee has appreciated the special provision for 'transitional areas' in the Constitution as 'a welcome addition to the process of national development.' This provision has special significance for the tribal areas because the process of urbanisation in their case is not an internal process of *their* economy. It is largely prompted by external forces. Therefore the State has a special responsibility to prepare and help the tribal people in these areas. Accordingly the Committee has suggested a number of specific measures in this regard such as exempting the tribal entrepreneurs from all forms of taxes in the early phase, statutory obligation to make the tribal land-owner an equal partner in any economic activity which may be taken up on his land, and such like.

While these measures will do in case of smaller enterprises, the real challenge of transition is faced when a large industrial or

mining complex is established affecting scores of villages and an extensive region. The Committee takes the bull by his horns. According to the Committee it is the duty of the State to ensure that the command of the community over its habitat, remains unchallenged. The fact of community's command has to be expressed in a new form conforming to the language of the new world order. The formulations about '**community ownership over industry**' in the Reports of Bhuria Committee envisage 50% share-holding in favour of the community, not on the strength of its contribution of capital, which cannot but be nil, but in lieu of the privilege granted to the venture for use of community resources. *This concept of community ownership would, in particular, imply that it is for the community to decide whether a particular industry will at all be set up in its area or not.* The community will be at the helm of affairs in all cases without any exception. It will, therefore, call the tune and **tame the transition**.

The provisions of the Extension Act read with the clear verdict of the Supreme Court about the intent and the scope of the Fifth Schedule will ensure that *hereafter the tribal people are at the centre of all resources-based industrial activity*. A lease of any description can be granted only in the favour of a tribal or a cooperative of tribals. Moreover, it will be the responsibility of the Gram Sabha to ensure that the new activity does not disrupt their egalitarian social and economic structure and the change is in harmony with their hoary tradition as also the Directive Principles of State Policy with regard to the use of community resources in Article 39 of the Constitution.

In the case of larger enterprises covering extensive areas, however, a lease in favour of an individual or even a cooperative will violate the basic premise concerning natural right of the community over the natural resources in its habitat. The only possible course consistence with tribal tradition, special provisions in the Constitution, the Fifth Schedule and the directive Principles is to create an institutional frame for **community ownership over industry** discussed above. The possibility of vested interests getting even further entrenched under the new dispensation by operating

under the cover of *benami* deals with tribals, which is no longer uncommon in ventures with special consideration for tribals, will automatically vanish in the face of above formulation about community ownership.

Restoration of Lost Command

A vital question which remains to be answered is about handling the situation where damage has already been done. So far as individuals are concerned *equality is the panacea of all ills* not only in the tribal areas but in the whole country. In most cases the tribal, in keeping with his tradition, has welcomed the outsider. He is happy to share what he has. The problem arises when advantage is taken of his hospitality, simplicity and ignorance about the ways of the crafty new world. The Hon'ble Supreme Court themselves have called for undoing of injustice, whatever may be the reason, and restore the community to the place of dignity due to it and guaranteed by the Constitution. The verdict is simple and unequivocal :

'It would be unjust, unfair and highly unreasonable merely to freeze the situation, instead of reversing the injustice and restoring the status quo.....'

If the spirit of this message is missed in any scheme of governance of these areas, according to the Hon'ble Court :

'The letter of law would be an empty content and by play of words deflect the course of justice to the tribal and denude them of the socio-economic empowerment and dignity of their person.'

This brings us to the specific issue of correctives. So far as individual cases are concerned the Gram Sabha has been deemed to be competent and the concerned Panchayats have been empowered 'to take appropriate measures to restore any unlawfully alienated land of a Scheduled Tribe and to' prevent alienation of land in the Scheduled Areas.' (Section 4(m) (iii) of the Extension Act)

The issue, however, is not that simple in those cases where the whole communities have been dislodged by the State itself either directly with the establishment of public sector enterprises or indirectly by granting a variety of leases and such like to private parties. *All the leases granted so far in the Scheduled Areas are violative of the Constitution. The consequential fading away of community's command over the resources, therefore, cannot be justified on any ground, either in terms of equity or law. This injustice has to be undone.* The only equitable course of action will be to restore the *status quo ante* concede the 'command' in all these cases to the community, which may be suitably defined, for example, by assigning 50% of equity shares in its favour. This holds for both private and public sector enterprises.

Disinvestment Unconstitutional

This brings us to the last question about the so-called disinvestment spree which governments of all colours are indulging in. It could be conceded for a while that the grant of leases to public sector enterprises was in good faith as it could be expected that their first objective would be to bestow the benefits of development on the local people. These bodies, however, failed to discharge that responsibility miserably, for example, even in the case of Malanchkhand referred to above. Nevertheless, it is clear now that the leases even in favour of public sector enterprises are against the spirit of the Constitution.

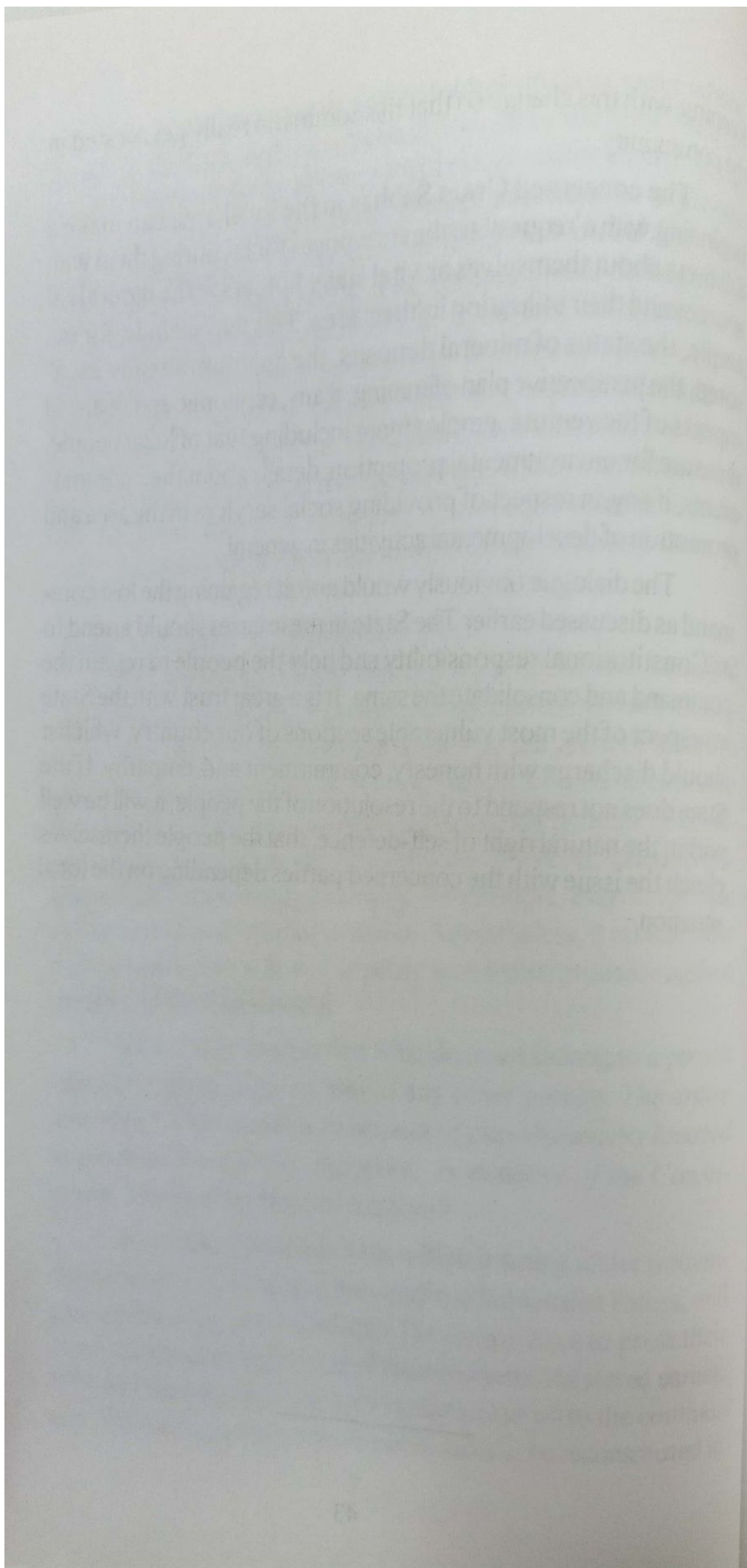
It is a truism to state that what does not belong to a person cannot be given away by him to any other person. *The entire process of disinvestment in respect of establishments located in the Scheduled Areas, therefore, is violative of the Constitution.* This must be stopped forthwith.

It is unlikely that the State, which is acting under tremendous pressure of the global neo-imperialist capitalist forces, will pay attention to this proposition. The people have to press their claim challenging the process of disinvestment. As stated earlier, 50% shareholding in every such venture must go to the community. Moreover, the concerned Boards have to be reconstituted in

keeping with this change so that the command really gets vested in the community.

The concerned Gram Sabhas in the local area can make a beginning with a 'request' to the enterprises for favouring them with full facts about themselves as vital stake holders in the natural resources and their utilisation in 'their' area. This may include, for example, the status of mineral deposits, the quantum already excavated, the perspective plan of mining, if any, economic and financial aspects of the venture, employment including that of local people, measure for environmental protection, details about their commitments, if any, in respect of providing social services in the area and promotion of developmental activities in general.

The dialogue obviously would aim at regaining the lost command as discussed earlier. The State in these cases should attend to its Constitutional responsibility and help the people to regain the command and consolidate the same. It is a great trust with the State in respect of the most vulnerable sections of our country, which it should discharge with honesty, commitment and empathy. If the State does not respond to the resolution of the people, it will be well within the natural right of self-defence, that the people themselves clinch the issue with the concerned parties depending on the local situation.



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Scheduled Areas

FOREWORD

A Committee of select Members of Parliament and Experts was constituted by the Ministry of Urban Affairs & Employment in its order dated 13.3.1995 to examine the issues relating to extension of the provisions of part IX A of the Constitution to the Scheduled Areas and to make recommendations on the salient features of the law for this purpose. The Committee considered in detail various aspects of the issues involved in the proposed law. At the first meeting of the Committee held on 31.3.1995, broad features of the proposed Report were indicated and it was decided to constitute a Sub-Committee to go into the details of various issues for consideration of the main Committee.

2. The Sub-Committee, and then the Committee discussed at length in several meetings issues arising out of the extension of provisions of Part IX A of the Constitution to the Scheduled Areas.

3. The drafts were considered in detail by the full Committee at its meetings held on 5.7.1995 and 19.7.1995. The Report, as unanimously adopted by the Committee, is presented herewith.

4. The text of the Report deals with the background and deliberates on the concerned issues leading to the recommendations. The final part of the Report comprises four Annexures containing proposals regarding powers, functions and procedures for *Gram Sabhas*, *Nagar Panchayats*, Municipalities and Autonomous District Councils in the Urban Scheduled Areas. Apart from the provisions contained in Part IX A of the Constitution, we have kept in mind the provisions of the Fifth Schedule of the Constitution.

5. The Committee of MPs and Experts has finalised the Report after careful consideration of various issues connected with the extension of the relevant provisions to the Scheduled Areas. It is our earnest hope that the Government of India will pursue further necessary action expeditiously to bring in the

necessary legislation under Article 243 ZC (3) of the Constitution.

6. My colleagues in the Parliament as well as Experts who are members of this Committee, have evinced keen interest in deliberating over the parameters of the tribal scenario and the issues concerning tribal communities in depth. We have had several fruitful sessions in the course of which important, imaginative and innovative ideas and suggestions emerged. The present Report is a culmination of all these. I extend my sincere gratitude to the members who have devoted time and attention to the Committee's work.

7. I would also like to take this opportunity to extend my thanks to the Ministries of Welfare, Law, Home, and Rural Areas & Employment for deputing their representatives providing for constructive interaction at the Committee's sessions.

8. Finally, I would like to sincerely thank Dr. J.P. Singh, Secretary, Ministry of Urban Affairs & Employment till 30.6.1995, Shri C. Ramachandran, the present Secretary of the Ministry and Shri M.S. Srinivasan, Joint Secretary in the Ministry for their valuable advice and suggestions during the Committees deliberations and for extending the necessary facilities to the Committee in the conduct of its work. Special mention is also due to the Local Self-Government Division of the Ministry of Urban Affairs & Employment for all the inputs provided by them.

New Delhi

19.07.1995

Dileep Singh Bhuria

I

INTRODUCTION

The Ministry of Urban Affairs and Employment, Government of India constituted a Committee of select Members of Parliament and Experts to make recommendations on the salient features of the Law for extending provisions of Part IX A of the Constitution relating to Municipalities to Scheduled Areas. A copy of the Order of the Ministry and composition are available at Annexure I.

1.2 The Committee met on 31st March, 1995 and decided that a Sub-Committee may be constituted to go into the details of various issues involved in extending the Constitution (74th Amendment) Act, 1992 to the Scheduled Areas, for their consideration. The Sub-Committee comprised the following :

1.	Shri Dileep Singh Bhuria	Chairman
2.	Shri K. Pradhani	Member
3.	Prof. M. Kamson	Member
4.	Shri Bandi Oraon	Member
5.	Dr. Bhupinder Singh	Member
6.	Dr. B.D. Sharma	Member
7.	Shri B.A. Agrawal	Member
8.	Shri R. M. Kapoor	Member
9.	Dr. Dinesh Mehta	Member
10.	Shri P.K. Ghosh	Invitee
11.	Shri M.S. Srinivasan	Convenor

1.3 In the meeting of the Sub-Committee held on 17th May 1995, the Chairman decided that the draft report based on the deliberations may be prepared by Dr. B.D. Sharma and Shri M.S. Srinivasan. Accordingly, a draft was prepared and considered by the Sub-Committee which was later adopted by the Committee.

II THE FRAME

A. The Scheduled Areas

2.1 The two Constitution Amendments (viz., 73rd and 74th) are concerned with *Panchayats* and Municipalities respectively. They together provide a comprehensive frame for local self government in the entire country covering both the rural and the urban areas. However, Parts IX and IXA do not apply to certain areas mentioned in Articles 243 M and 243 ZC respectively. The Ministry of Rural Areas & Employment and the Ministry of Urban Affairs and Employment have taken up the question of extending these Parts, in the first instance, to the Scheduled Areas referred to in Clause (1) of Article 244. Accordingly, our consideration by and large has been concerned with issues relevant to the Scheduled Areas. We are informed that suitable action with regard to other areas referred to in the two Articles will be taken separately.

2.2 The first Committee (Chairman : Shri Dileep Bhuria) was appointed by the Ministry of Rural Development to give suggestions about the proposed structure of *Panchayats* in the Scheduled Areas. The same Committee, with some changes, has now been entrusted with the responsibility of making suggestions for Urban Bodies. Accordingly, the basic frame for the structure suggested for *Panchayats* has been taken as the starting point for our consideration. That frame itself was built on certain premises concerning the tribal people in the Scheduled Areas and their advancement. Those premises are valid for the urban areas as well, *albeit*, with some changes because of somewhat different socio-economic situation. Therefore, it is not necessary for us to go over the entire theme again. This Report may be considered as a continuation of the earlier Report on *Panchayats*.

2.3 An important point for consideration of the Committee was whether it will be possible, or even necessary, for us to go into the details of existing municipal laws in different States and make suggestions for alternative laws for new urban bodies in the Scheduled Areas. This is not necessary. We have broadly followed in this regard the design adopted in the Constitutional Amendment

Acts themselves for the rest of the country. We are presenting the basic features of the proposed structure and also some specific points vital for the Scheduled Areas. The precise legal and institutional framework for each State is a detailed exercise which will have to be undertaken at the State level keeping in view the situation there. The two Constitutional Amendments have placed this responsibility for other areas on the State Legislatures. In the case of Scheduled Areas, this responsibility will naturally fall on the Governors, who are to do the needful in exercise of their powers under Para 5 (2) of the Fifth Schedule.

2.4 Since Part IX and Part IXA have not been extended to the Scheduled Areas, the repeal clauses therein, viz., Articles 243N and 243ZF also do not extend to the Scheduled Areas. Therefore, the pre-Amendment laws concerning *Panchayats* and Municipalities, if not specifically repealed by the concerned legislature, will remain in force. After the Parliament makes a Law extending the provisions of Parts IX and IXA under Article 243M(4)(B) and 243ZC(3), with such exceptions and modifications as are suggested herein, the earlier laws, to the extent they are inconsistent with its provisions, should automatically lapse. We may follow the lead given in Article 243N and 243ZF. The existing laws should continue until the regulations have been made by the Governor as suggested above, or for one year after the coming in force of the Parliamentary Law, whichever is earlier.

2.5 *We, therefore, recommend that :*

- (i) The Parliament may make a Law as soon as possible incorporating the special features suggested by us in this Report. The Governor of the concerned State may make suitable regulations and/or modify other laws through public notifications using his powers and discretion under Schedule V of the Constitution within one year of the enactment of the above Law. They may provide for such details about institutional arrangements, rules, etc., as may be necessary for making the new scheme operational forthwith in the light of our suggestions and keeping in view the local socio-economic situation; and

- (ii) Any provision of a law relating to Municipalities in force in a State immediately before coming into force of the proposed Act of Parliament, which is inconsistent with the provisions of that law, may continue to be in force until amended or repealed by the Governor under Para 5 of the Fifth Schedule, or until the expiration of one year from such commencement, whichever is earlier.

B. Other than Scheduled Areas

2.6 We may take this opportunity to have an overview of the position concerning special provisions regarding *Panchayats* and Municipalities in all tribal areas, irrespective of their formal classification under the Constitution, with a view to indicate a possible line of action which the concerned Ministries could adopt to achieve the objectives of the two Amendments and other Constitutional provisions for the same. In the mainland, i.e., the tribal areas other than those in the North-East, the situation is comparatively simpler. Bulk of the tribal areas are covered under the Fifth Schedule. But a sizeable tribal majority area has remained outside its purview. We have referred in our earlier Report to the fact that the process of bringing all tribal-areas under the Fifth Schedule was taken up in 1976 as a part of the programme for preparation of tribal sub-plans. The process of scheduling came to a halt in 1981 and has remained unattended thereafter. We have recommended in our earlier Report that all the remaining tribal areas should be brought under the Fifth Schedule within one year. This process must be completed before taking up the administrative reorganisation suggested by us in keeping with the physical, social and economic situation in each case.

2.7 The situation in the North-East is rather complex, which we will review State-wise.

(i) Arunachal Pradesh

2.8 Arunachal Pradesh, the largest tribal State in the region, has no area under the Fifth or the Sixth Schedule. The only special provision for Arunachal Pradesh under Article 371H concerns the special responsibility and powers of the Governor with respect to law and order in the State and the issue of self-governance and extension of other laws in that State. Accordingly,

Arunachal Pradesh does not find a mention in Articles 243M and 243ZC. Therefore, both Part IX and Part IXA automatically cover Arunachal Pradesh without any modification. The presumption perhaps is that this frame is adequate for Arunachal which is not consistent with the general presumption of a special frame for tribal areas. Moreover, our preliminary examination shows that even the comprehensive Sixth Schedule, which covers areas less complex than Arunachal, needs a second look. The State Assembly may not be able to incorporate certain special provisions to make the *panchayat* and municipal laws, which are vital for balanced and harmonious development, in keeping with the needs of tribal people of Arunachal.

(ii) Hill Areas of Manipur

2.9 The Hill Areas of Manipur, for which District Councils exist, have been excluded from the purview of Part IX *vide* Article 243 M concerning *Panchayats*. However, there is no such exemption *vide* Article 243ZC in relation to Municipalities. It is important to note that whereas the procedure for extension of Part IX, as it is or with suitable modifications, to other exempted areas has been laid down in clause (4) of the said Article, there is no such provision for the Hill Areas of Manipur. It implies that any change in the structure of the District Councils, which have been established under State law, can be brought about by the State legislature of Manipur. There is no doubt that Article 371 C of the Constitution envisages constitution of a Committee of the Legislative Assembly of the State consisting of the members of that Assembly elected from the Hill Areas of that State, but it is doubtful whether in this vital matter concerning self governance, that stipulation will be adequate. Moreover, confusion is likely to be created when Part IX has been extended to the valley and Part IXA to the entire State, with the Hill Areas left out without any guidelines when the issue is being seriously deliberated for all tribal areas. Therefore, the immediate question for consideration is whether these District Councils are adequate in the light of the changing situation concerning people's aspirations for participative democracy at the grassroots level. Similarly, it will be necessary

to examine whether provisions concerning urban areas under the existing District Council structure and Part IXA of the Constitution are consistent and whether there is need for special provisions

2.10 We are constrained to observe that eventhough the issues concerning Hill Areas of Manipur came up for discussion in numerous forums from time to time earlier, the situation has remained unsatisfactory. When the question of bringing the tribal areas in neighbouring Tripura under the Sixth Schedule was being considered and an Autonomous Council was constituted even for areas which were not compact, the people in the Hill Areas of Manipur were reassured that with much larger and compact tribal areas in Manipur, their inclusion under the Sixth Schedule was only a matter of time. The exclusion of Manipur from the scheme of Part IX created a new hope that their special problems will be considered and a suitable structure will be evolved. The non-exclusion of the Hill Areas of Manipur from the scheme of 74th Amendment came as a surprise and disappointment which is also indicative of a state of confusion of the situation in the North East. It is time there is complete clarity on the issues facing the Hill Areas in Manipur. The Parliament should seriously consider the problems of these areas which are becoming increasingly restive because of this indecision, as is being done for the Scheduled Areas and Tribal Areas.

2.11 We feel that there is no reason why the compact tribal areas of Manipur should not be brought under the Sixth Schedule since they need not only protection but also an opportunity for people's participation and development in the real sense. We are not in a position to go into details because that itself will require a dialogue with the concerned people and indepth review and study of the functioning of the present system. We may, therefore, at the moment only suggest that the Ministry of Rural Areas and Employment and also the Ministry of Urban Affairs and Employment address the problems of the Hill Areas of Manipur urgently and appoint a Committee which may give its suggestions as we are doing for the Fifth Schedule Areas.

(iii) Mizoram

2.12 In Mizoram, there are only three small Autonomous District Councils under the Sixth Schedule. The bulk of the Mizo territory is not covered by it. Moreover, while the entire Mizoram and the Sixth Schedule area therein enjoy double exemption under Article 243M, only the Sixth Schedule area is exempt under Article 243ZC. Ironically, there is no urban area in Mizoram even though Aizawl accounts for one-fifth of the State's population. The position now is that under Article 243M(4)(a), the State Legislature can extend the provisions of Part IX to this non-Scheduled Area through a Resolution. But it is important to note that the State Legislature has the choice of accepting this Part as it is, or rejecting it in toto. It does not have discretion to make any amendment in that scheme. This is not consistent with the general proposition of a flexible frame for tribal areas. Similarly, Municipalities, as and when they are so declared by the Governor, must be subject to Part IXA and not to the special provisions which we are contemplating.

(iv) Nagaland

2.13 No part of Nagaland is scheduled. However, there is a special provision for the State of Nagaland in the Constitution (Article 371 A). No act of Parliament in respect of certain matters can apply to the State unless the Legislative Assembly of Nagaland by a resolution so decides. The Governor has a special responsibility with respect to law and order. The Article also envisages establishment of a Regional Council for Tuensang district. This Regional Council has a role similar to that of Autonomous District Council for Sixth Schedule Areas in other States. There is, however, an important difference. The Chairman of the Regional Council is Deputy Commissioner of the district. The Constitution does not dwell on any other aspect of local self government, the traditional institutions retaining their identity and strength. But the question is how long and how far these institutions will be able to withstand the new forces having the support of the State and the money power of the modern economy. This is the basic issue

concerning self governance in Nagaland. Moreover when the question of Sixth Schedule Areas is considered, it will be appropriate to cover the Regional Council of Tuensang as well. It may be noted that Nagaland has been exempted from coverage by Part IX but not Part IXA. The situation in Nagaland, therefore, is the same as for the Non-Scheduled Areas of Mizoram.

(v) Meghalaya

2.14 On the other extreme is Meghalaya. Its entire territory is divided into three Autonomous District Councils - Khasi, Jaintia and Garo. The responsibility for extending both Parts IX and IX A, therefore, rests only with the Parliament.

(vi) Tripura

2.15 In Tripura, although the Tribal Area is neither comparatively small nor compact, it has been brought under the Sixth Schedule and an ADC has been constituted. It is for the Parliament to make a Law for extending the provisions of Part IX and Part IX A to the Scheduled Areas in Tripura.

(vii) Assam Plains

2.16 In Assam, there is only one Autonomous District Council, Karbi Anglong. The rest of the plain tribal areas have only a provision of Tribal Belts and Blocks which is a local arrangement having no recognition under the Constitution. The only special provision in the Constitution (Article 371 B) which could concern these areas is the constitution of a committee of the Legislative Assembly of the State consisting of members of the tribal areas specified in the Sixth Schedule and such other members of that Assembly as may be specified in the order. These arrangements have proved to be inadequate. While the question of creating a separate political-administrative frame and special provisions is under consideration for the Bodo Area, the problem of other tribal areas will remain unattended until the Union Government decides to do so specially. Now when the question of all tribal areas is being considered at the Centre, it will be apt to have a systematic look at those areas as well.

(viii) Sikkim

2.17 In Sikkim, the Governor has special responsibility for an equitable arrangement for ensuring social and economic advancement of different sections of the population of Sikkim under Article 371F (g). But there is no special provision concerning the tribal people and their traditional institutions. Both Part IX and Part IXA cover the entire Sikkim. This implies that there will be uniform structure of *Panchayats* and Municipalities in the State. The question of harmonising the traditional tribal institutions and formal structure, which is being gradually extended in Sikkim, needs urgent consideration, lest conflict situations arise there, as is happening in many other tribal areas in the country.

Role of Sixth Schedule

2.18 With the above complex situation in the North-East, it will be useful to dwell in detail on some aspects of the Sixth Schedule. This Schedule has broadly two objectives. Its structure is designed to provide necessary protection to the tribal people in the larger territories in which they comprise a minority. Moreover, the fact that a smaller tribal group in a larger tribal territory may also require protection against the larger group has also been taken care of in this scheme through the institution of Autonomous Regional Councils within ADCs. In Mizoram, a tribal State, the three ADCs for very small tribal groups now serve this purpose. A similar provision has been made for Nagaland in the form of the Regional Council for Tuensang without any reference to the Sixth Schedule. The second objective of the Sixth Schedule is to create a strong institutional frame for self-governance at different levels but under the guidance of the ADCs and RDCs.

2.19 Parts IX and IXA, on the other hand, no doubt provide for people's participation but without adequate focus on non-developmental functions. *The new structure for tribal areas, as we are envisaging, will have all these facets - protective, self-governance and development properly blended, so that it may become a real effective force in the present critical phase of tribal history.* The question in respect of the Sixth Schedule areas

is whether that Schedule can be expected to cover all these aspects adequately or it will have to be suitably reinforced.

2.20 There are two obvious weaknesses in the Sixth Schedule which we may mention just by way of illustration. The ADC is weak financially. It is totally dependent on the State which provides funds at its discretion. This arrangement cannot but erode its autonomy. Secondly, the Village Council is dependent on the ADC even for its formal recognition. It is the strong tradition of village governance which has enabled the Village Councils in various forms in different areas to retain their identity and autonomy. But 'how long can this continue?', is the question which concerns us, particularly when money power is overwhelming all aspects of people's life. It is, therefore, necessary that these questions are immediately considered. The role and responsibilities of the ADCs in the Sixth Schedule Areas and the structure of self-governing systems in other tribal areas of the North-East and Sikkim have to be examined in detail and suitable institutions established as early as possible in consonance with the spirit of the two Constitutional Amendments and other provisions of the Constitution.

2.21 *We, therefore, recommend that :*

- (i) All the tribal areas in the rest of the country other than North-East, not covered under the Fifth Schedule, should be brought under the Fifth Schedule so that they also get the benefit of having institutions in consonance with the tribal situation as recommended by us in the two Reports; and
- (ii) A Committee may be constituted for examining the situation in all tribal areas of the North-East and Sikkim irrespective of their formal classification under the Constitution for suggesting changes, if any, in the provisions of the Sixth Schedule, as also the special provisions in the Constitution for tribal States and areas, under Part IX of the Constitution and for making institutional arrangements for all other tribal areas.

III. SOME IMPORTANT FEATURES AND ISSUES

Demographic Trends in Scheduled Areas

3.1 An important feature of the contemporary tribal situation is that as the tribal areas get opened up and urban settlements are established, the simple tribal people either voluntarily move out, or are pushed back from the growth centres and main arteries of communication. *This results in permanent loss to the community of the benefits which accrue to the resource-rich tribal areas as a result of development.* Moreover, the hinterlands of the new Centres face backwash effect and also backlash of development. Consequently, there is growing polarization between the urban centres and the surrounding tribal areas. This polarisation is much more acute here than in the rest of the country. The demographic structure of these urban centres even in predominantly tribal tracts becomes increasingly unfavourable to the tribal people. Moreover, the small urban tribal groups, which may still remain there, are highly disadvantaged. They are located generally at the periphery and have hardly any representation in the Urban Core.

3.2 This pattern of development has not only economic consequences, but also has far-reaching political and social implications. The urban centres, which wield political, administrative and economic authority, are totally outside the purview of the traditional authority of the tribal community. They tend to function as authoritarian systems with no concern or consideration for the community around. This is the biggest cause of resentment amongst the tribal people. The feeling may not be overt but has a deep imprint in the mass psyche. *It is an irony that the places, which should function as growth centres, tend to become centres of exploitation. They may even wield a stranglehold on this economy leading to pauperisation of the people.* And, what is more important, they are so perceived acutely by the people around who are witnesses to the negative facets of urbanisation-induced growth. Even where some members of the tribal community are able to acquire a foothold in these Centres, more often than not, they may be drawn from a larger area with negligible local

links. Thus, instead of having rural-urban continuum, as is generally the case elsewhere, the urban centres in this case are totally isolated socially and are domineering economically and politically.

3.3 Such a pattern of growth in the Scheduled Areas cannot be expected to lead to harmonious development imbued with ideals of justice, equality and fraternity. It is bound to result in antagonistic relationships. It is not in the interest of either the tribal people and urban centres or of an orderly regional and national development.

3.4 *We, therefore, recommend that :*

Measures should be taken so as to ensure that urban centres located in the Scheduled Area function and develop as growth centres in the concerned region. Their activities should be supportive, in general, of the economic activities and, in particular, of interests of the tribal people in the surrounding areas. They should also provide higher levels of social services, function as nuclei of diffusion of scientific temper and enrich cultural life of the region.

Clean Slate - A Great Opportunity

3.5 Another important aspect of urbanization in tribal areas is that here is a unique opportunity where development can be guided and lessons can be learnt from earlier experiences elsewhere. In almost every case, the urban centres in tribal areas begin almost from the scratch with the setting up of a few trading, administrative and/or industrial establishments. In the absence of any planning at this stage, there is virtual chaos. The growth tends to proceed in a totally uneven fashion and without any discernible pattern. As observed earlier, the weaker sections of the community are gradually pushed out. The personal gain is the only criterion for location of the industry. Unseemly, nay, ugly conditions may be created even as a few hutments are established in the midst of an idyllic setting. There is no reason why it cannot be ensured that the growth of urban centres in the tribal areas is well-planned and is in harmony with its surroundings and that undesirable growth is not allowed to take place.

3.6 *We, therefore, recommend that :*

- (i) Preparation of a Master plan should be made obligatory for every urban local body in the Scheduled Area;

- (ii) Wherever such Master Plans have not been prepared so far, they should be prepared within a period of three years;
- (iii) Master Plans should focus, *inter alia*, on issues concerning the tribal people and harmonious growth of the region around. The suggestions made in this Report should be taken as guidelines for preparation of such plans; and
- (iv) The Autonomous District Councils should approve the Master Plans with such modifications as may be considered necessary in the furtherance of above objectives in general and tribal welfare in particular.

Tribal Land

(a) Transfer & Acquisition

3.7 The Only asset of the tribal people is their land which is also their source of livelihood. No person should be deprived of his primary source of livelihood without providing an alternative which is acceptable to him and which ensures an honourable position to him in the new setting. If this objective were to be achieved, no sale of tribal land can be permitted, without making him a partner in the economic activity which may be taken up in the area using his land. As we have recommended for the rural areas in the earlier Report, we *reiterate* the same for urban areas, that is, no land may be acquired by any authority except for the purposes of education, health, railways, communication and defence without prior consent of the *Mohalls/Ward Sabha* or the *Gram Sabha*, (see below), as the case may be, and of the person concerned, provided further that an alternative means of livelihood acceptable to the affected person is provided besides ensuring an honourable position to him in the new setting.

3.8 *We, therefore, recommend that :*

- (i) No land may be acquired except for the purposes of education, health, railways, communication and defence without prior consent of the *Mohalla/Ward Sabha* or the *Gram Sabha*, as the case may be, and of the person concerned, provided further that an alternative means of livelihood acceptable to the affected person is made available, besides ensuring an honourable position to him in the new setting; and

- (ii) No sale of tribal land may be permitted, without making the tribal owner a partner in the economic activity which may be taken up in the area using his land.

(b) Restoration and Check on Further Alienation

3.9 We may now turn to the basic problem of land alienation which the tribal people face as soon as urbanisation begins in any area. There are laws and regulations in every State on this issue. In some cases, the urban areas are exempt from the purview of these laws on a variety of considerations like change in the use of land from agriculture to other purposes. Even when the law may be followed, it is not certain that the spirit may have been honoured. The simple tribal may have been trapped into a deal without realising its implications. The acquisition of land for public purposes has been one of the major causes of land alienation. Since land rates in tribal areas are low, concerned authorities tend to acquire excessive lands with an eye on their future value. In other cases, some people may take advantage of the unsatisfactory state of land records and prefer their claims either with the connivance of the local officials or even in the face of their resistance or, with a convenient ploy, claim adverse possession. The original owner may have no voice since his name may not be there in the record.

3.10 Undoing this injustice, which a large number of tribal people have suffered in the process of urbanisation, has to be an important task before the new authorities of self-governance. Many efforts have been made in this regard in some States which could provide some lessons for future action. For example, the *Madhya Pradesh Law envisages that in case a person is in possession of a piece of land, which once belonged to a tribal, the onus of proof that this was acquired in accordance with law and without taking advantage of the tribal's ignorance and innocence lies on the person now holding the land.* There are penal provisions in some Acts for cases of encroachment on tribal lands and against continued encroachment. These laws should be effectively enforced.

3.11 We recommend that :

- (i) Stringent regulations should be made for prevention of alienation of tribal lands in the urban areas, identification of alienated lands and their restoration as a time bound programme.
- (ii) The onus of proof in case of a non-tribal in possession of land that once belonged to a tribal to establish that the land was acquired through legitimate and legal means should be on the non-tribal now in possession of the land; and
- (iii) All lands in the urban and industrial areas acquired in excess of the long-term needs by different establishments should be identified and restored to their erstwhile owners within, say, three years.

Migrant Tribal Labour

3.12 We have referred to different aspects of urbanisation having a bearing on tribal people and their economy. However, the question of migrant tribal labour is one aspect which needs to be specially taken care of. It is important to note that the tribal migrant does not leave his family behind in the village as is the practice among other migrant labourers in non-tribal areas. He moves with his family and children. This creates a situation where his exploitation may assume extreme forms as his dependence on the contractor may be total. It has a very adverse effect on the children who are denied even the basic facility of schooling. Since the workers may remain at one place only for a season, the children cannot get admission even to an ordinary municipal school.

3.13 The problem stated above is somewhat similar to that faced by labourers moving far away from their homes which they do usually with family and in groups. Bulk of the interstate migrant labourers fall in this category. The Union Government has made a special law for the welfare of such people working in distant places away from their homes. We feel that similar provisions should be made for migrant tribal labour even within the State.

3.14 We recommend that :

- (i) Provisions similar to those in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act,

1979 may be made in case of Scheduled Tribes to cover the situation, where migration may be within the State and outside the Scheduled District to which the labourers belong;

- (ii) A special stipulation in this Law should be made for education of the children of migrant tribal labour; and
- (iii) It should be made obligatory for the person hiring tribal labour and taking them out of the Scheduled District, to register with a competent/appropriate authority nominated by ADC and provide such details as may be prescribed by it in this regard. Any violation of this provision should be made a penal offence.

False Claims

3.15 The opportunities in the urban sector are very attractive compared to the general economic condition not only of the Scheduled Tribes but even of the general population. Therefore, there is keen competition for getting a foothold therein for which all sorts of subterfuges may be used. The most regrettable aspect is that some people even succeed in entering on the basis of false certificates of belonging to a Scheduled Tribe. This practice has acquired menacing proportions in recent years because the State has failed to take adequate measures not only to punish but even to detect such malpractices. The Hon'ble Supreme Court have recently observed that there should be a law providing for deterrent punishment by way of minimum imprisonment for those indulging in the malpractice of using false certificates for personal gains. A law should be made accordingly.

3.16 While the deterrent law will have some effect, the evil has to be checked at its root. There appears to be utter confusion about the procedure for issue of caste certificates and persons authorised for their issue. Broadly there are two situation, viz., (i) persons having educational qualifications and (ii) others having no benefit of education. In respect of the former, the Commissioner for Scheduled Castes and Scheduled Tribes had made specific recommendation in his Report to the President (Twenty Eighth Report) about a permanent community certificate being issued at the end of school education. Moreover, it should be made obligatory to incorporate

a suitable computer entry in the High School Certificate, which should be deemed to be conclusive evidence about the person belonging to a Scheduled Tribe. We endorse this suggestion.

3.17 As regards the other group, that is, those not having the benefit of education, Government of India should take a lead in providing guidelines and prescribing a procedure. Since the *Gram Sabha* comprises the primary social unit, a preliminary caste certificate issued by the *Gram Panchayat* on the basis of a resolution in the *Gram Sabha*, should form the basis of the issue of certificate by the designated official(s) whose duty it will be to check the authenticity of the preliminary certificate and its validity with reference to the rules issued by the State/Central Government in that regard.

3.18 *We recommend that :*

- (i) A suitable law should be enacted forthwith by the Parliament to eradicate this malpractice effectively and stringent punishment provided for offenders on both sides, that is, the person seeking and the person granting the false certificate; and
- (ii) A procedure for issue of tribe certificate should be framed forthwith by the Central Government incorporating the concept of a permanent computer number at the end of school education as recommended by the Commissioner for Scheduled Caste and Scheduled Tribes in his 28th Report and a Certificate by the *Gram Panchayat* based on the resolution of concerned *Gram Sabha* as suggested above.

IV PERSPECTIVE

Stabilizing Tribal People in Urban Setting

4.1 With the growth of urban industrial centres, the value of land and housing appreciates. Nevertheless the tribal may continue to live in his traditional style for a long time. Any tax by the urban body on his property with reference to the appreciated value becomes a heavy burden on him. This inevitably results in alienation of land and exodus of tribals. This process must be checked. Moreover he must be enabled to take advantage of and participate in the new development in the Urban Centre.

4.2 *We, therefore, recommend that:*

- (i) No urban tax should be leviable on a tribal who continues to live in his traditional style. Clear norms should be laid down for exempting the original inhabitants of newly-emerging urban areas from this tax liability.
- (ii) In all programmes of development like establishment of housing colonies, trading centres, etc., reservation should be made in favour of tribal people in proportion to their population in the concerned district.
- (iii) There should be no de-reservation, whatsoever, so as to enable the new facility to be availed by the tribals as and when they are ready for the same; and
- iv) The tribals should be encouraged to man, to the extent possible, Public Distribution System Outlets, post offices and such like facilities in their areas.

Urban Centres to Facilitate and Promote Growth in the Hinterlands:

4.3 An important objective, as also the function of an urban centre, is to serve the hinter land and promote its economy. Any artificial barriers, particularly in the setting of simple tribal communities, are inimical to this process. They usually lead to

exploitative relationships. Accordingly, there should be free flow of goods and services between the Core, *that is*, the urban area and its hinterland. No taxes whatsoever should be imposed on the tribal people bringing their produce to the urban centres for sale. Similarly, there should be no fee chargeable on entry of persons into the urban area. It is a matter of deep concern to us that all sorts of malpractices begin even before the tribal reaches the *hat*. The goods may be literally snatched away forcing a paltry amount in his hand by way of payment. This regime must end. Moreover, the services of agricultural market yards and such like should be free.

4.4 No taxes whatsoever should be levied on tribals living in an urban area engaged in traditional handicrafts and household industries. The Autonomous District Councils may be empowered to make laws relating to provision and running of weekly markets in their area in general and protecting the poor innocent tribals specially women, in sale of their produce, from exploitation and harassment by all sorts of middlemen and traders in particular. For this purpose, Urban Bodies should make suitable rules and regulations and take administrative measures. Further, Urban Local Bodies should encourage cooperative endeavour of tribals with a view to eliminate exploitation and promote their collective welfare.

4.5 It will also be necessary that tribal people entering the modern sectors of economy by setting up small trading and industrial units are not only encouraged, but, what is more important, they should not be subject to normal processes of taxation, etc. Such taxes, besides being an economic burden, are an instrument of harassment. The simple tribal people can hardly be expected to be in a position to cope up with such impediments

4.6 *We, therefore, recommend that :*

- (i) The activities of Urban Centres should be so designed as to subserve tribal hinterland and promote its economy; and
- (ii) Stringent laws should be made for regulating all markets including weekly *has*. Eradication of malpractices including harassment of innocent tribals, particularly women, on way to or in the market, should be a special responsibility of the Urban Body.

4.7 We also recommend that:

- (i) No taxes should be imposed on tribal people bringing their produce for sale to the urban area;
- (ii) No taxes should be levied on tribal people living in urban areas engaged in handicrafts and household industries;
- (iii) All tribal establishments in urban areas should be exempt from all types of municipal and other taxes for a period of ten years, to facilitate their integration into the new environment; and
- (iv) Cooperative endeavours of tribal people should be established, encouraged and supported with a view to elimination of exploitation and for promoting their welfare.

Planning for Resource Use in Scheduled Areas

4.8 While urbanisation and industrialisation depend on a number of factors, it is generally noted that the impact of these activities on the tribal economy is not an important consideration in that process. The result is that even where extensive lands may be available for setting up of industries, tribal lands may be acquired simply because they happen to be located at a more convenient place or those locations may yield windfall gains to some people and vested interests. For example, hardly 30% of the geographical area in Bastar (Madhya Pradesh) is outside the Reserved and Protected Forests. The population is increasing which has to make do within this area for all its future requirements for agriculture and other activities. Even then, big industrial establishments are sought to be established by purchasing and/or acquiring tribal lands, even in the face of bitter resistance by the people. There is no reason why such industries cannot be set up in areas which are designated as wastelands or degraded forests. Such locations will also help in more balanced development of the area.

4.9 Since the Scheduled Areas have rich natural resources and are the focus of attention in the new development thrust, it is high time their utilisation is planned in such a way that it does not adversely affect the tribal economy and the tribals are able to take advantage of the new activity. The essence of self-governance in the tribal context is command over all local affairs of the community which demands that the community should have full command over the industry based on local resources.

4.10 We, therefore, recommend that:

- (i) Setting up of industries in Scheduled Areas at random and without assessing their impact on the tribal economy must stop forthwith;
- (ii) The Government should identify potential industrial areas in advance, after due process in which the people and the institutions should be able to participate meaningfully ensuring that community's decision prevails and is final;
- (iii) No agricultural land or land used for common purposes should be allowed to be transferred or purchased in any way for setting up of an industry; and
- (iv) In all industrial enterprises set up in the Scheduled Areas, other than small ventures referred to earlier, the community should be deemed to be the owner with 50% share in its favour by virtue of its allowing the industry to use the local resources and getting established. The share-holding of the company/persons making financial investment should be limited to not more 26%.

Unearned Benefits

4.11 Another important feature of urban growth, particularly in tribal areas, is that while the economy in the hinterland stagnates, huge benefits, mostly unearned, accrue in the urban centre. More often than not, these are all speculative gains. This is one of the most important reasons for a few people acquiring phenomenal riches in a short span of time. Consequently, such people become not only subjects of envy, but also targets of hate fuelling discontent in the whole area. In view of the fact that the ordinary tribal tends to move out from centres of new economic activity, he even loses what he has, which is grabbed by others. The latter grow rich essentially at his cost. Moreover, the economic condition of the municipalities in these remote areas is weak. They are not able, may be they do not care, to cater even to the ordinary civic needs, much less the social responsibilities cast upon them by virtue of their location in the Scheduled Areas.

4.12 We recommend that :

Ways and means should be found for mopping up of the windfall gains due to appreciation of land and property value in the urban

centres in the Scheduled Areas. A suitable mechanism should be evolved through which the municipality is entitled to a share of three-fourths of the unearned increase in the value of urban property at the time of its sale which should be credited to a special fund for social development in the area. Tribals deriving gains out of such unearned increase at the time of sale of their lands should be exempted for the time being from taxation until a new balance is attained in the area.

Special Responsibilities of Municipalities

4.13 Municipalities have a special responsibility towards the tribal people as leading growth centres in backward tribal areas. This has a special significance in relation to social services and similar other urban facilities for the people in the hinterland. The rationale is simple. The basic investment for development of urban centres even in the private sector is the surplus generated from the services provided by people in the hinterland. We note with concern that the tribal people may remain outside the pale of even ordinary social services while the urban centres may acquire modern facilities to cater to the neo-rich and affluent. It is regretted that this aspect has claimed no attention so far. Appropriate correctives measures are called for urgently.

4.14 We recommend that :

- (i) There shall be reservation of seats in all educational institutions - private or public- in urban centres for children belonging to Scheduled Tribes hailing from its hinterland in proportion to their population in the district, subject to a minimum of one-third of the total number of seats. They should be provided free education including all other facilities in these institutions *at par* with other scholars;
- (ii) All health institutions located in a municipality - private or public - should be accessible to the Scheduled Tribes in the hinterland and their services should be made available to them free of cost; and
- (iii) Municipalities should maintain neat, open and congenial places for rest and stay for the tribal people from the area visiting the town. The facilities should be free.

4.15 We are distressed at the fate of places of cultural and religious significance particularly after the community disappears

from the area and/or the urban octopus engulfs them. One reason for this neglect is that such places do not have lavish buildings or other symbols recognised by the elite as important and significant. The sacred groves may become dumping ground of a municipality and modest tattered huts of deities may find themselves juxtaposed with lavatories. This must stop. The concerned functionaries of the municipality should exercise strict vigil to avert such defilements and blasphemous actions.

4.16 We recommend that :

- (i) Municipalities should be responsible for promotion and good maintenance of all cultural and religious places of tribal people located within the municipal limits;
- (ii) The concerned functionaries of the municipality should exercise strict vigil to avert defilement of cultural and religious places; and
- (iii) The neglect by officials and action by individuals leading to such defilement should be made a penal offence.

Check against Undesirable Activities

4.17 One of the banes of urbanization in tribal areas is that many undesirable elements from advanced areas find their way in these areas and indulge in undesirable activities. As stated earlier, the simple tribal people on the other hand are defenceless against such elements. These people may indulge in all sorts of antisocial and even criminal activities polluting the social scene irretrievably. Commercialisation of cultural life has proved to be disastrous in many areas. Trafficking may become rampant as the simple tribal girls are amenable to be easily trapped. Moreover, the simple tribal may be forced by circumstances into inhuman and undignified occupations. The urban centres, as harbingers of development in the remote areas having simple people, must assume special responsibility to see that tribal are not subject to these adverse forces and the undesirable elements do not have an upper hand.

4.18 We, therefore, recommend that :

- (i) Measures should be taken to ensure that there is no commercial exploitation of tribal's cultural life;

- (ii) While tourism could be encouraged, tribal culture should not be portrayed as artifact of market;
- (iii) Municipalities should be duty bound not to allow luxury hotels in Scheduled Areas;
- (iv) There should be effective check against social pollution. No games of chance and similar activities should be allowed in or allowed to be operated from municipal areas;
- (v) Stringent laws should be made for effective check against trafficking and exploitation of tribal women;
- (vi) Municipality should exercise stringent control over dishonourable occupations like domestic service, rickshaw pulling and child labour. There should be a legal prohibition on engaging members of Scheduled Tribes in these occupations;
- (vii) A strict watch shall be kept on antisocial elements. Special provision should be made for their expulsion from the area, if necessary; and
- (viii) Any infringement of these provisions should be a penal offence.

4.19 We also recommend that :

In view of the special significance of the issues raised above, the President may issue directions to the Urban Local Bodies in Scheduled Areas in that regard. Such directions may be placed on the table of the Parliament and State Assemblies.

V STRUCTURE

Classification of Urban Centres

5.1 The urban centres in Scheduled Areas may be grouped into three categories, viz., (i) transitional areas comprising small trading/administrative/social service centres with mixed urban and rural, or '*quasba*' character. These centres could be designated as *Nagar Panchayats*; (ii) the larger urban centres functioning as administrative and trading centres with higher level of social services. These centres may be known as Municipal Councils. Some of the Municipal Councils in course of time may graduate to the status of Municipal Corporations; and (iii) Industrial and Mining Townships, which have a special character with potential for fast growth and socio-economic change, should comprise a separate category.

5.2 We recommend that:

- (i) For the purposes of self-governing institutions in the Scheduled Urban Areas, all urban centres may be designated, as the case may be, as '*Nagar Panchayats*', 'Municipal Councils', 'Municipal Corporations' and 'Industrial/Mining Townships';
- (ii) The Governor may make rules for declaration and classification of urban areas having regard to the population, the state of employment in non-agricultural activities, the infrastructure, social services, development potential and such other factors, as he may deem necessary; and
- (iii) An area may be notified as an urban area of appropriate category by the Governor in consultation with, or in pursuance of the recommendations of the Tribes Advisory Council.

Tribal Habitations in and around Urban Centres

5.3 As soon as a tribal habitation is incorporated in an urban area, or comes under its influence, the community experiences tremendous stress. It may collapse suddenly or disappear gradually. The tribal people in this situation are rendered defenceless and they are left with no option but to move out. Many of them become unfortunate victims of the new economic system. The freedom loving people may end up as bonded labourers. Child labour may

flourish in what was once the 'Kingdom of the Youth'. Unsuspecting innocent girls may get trapped in dens of vices. In this situation, the tribal community is in no position even to survive as a community, let alone the possibility of it partaking in the fruits of development and the urbanization processes. *It is, therefore, necessary that the community at the habitation level is not only protected, but also enabled to defend itself in the new setting.* It should be able to help its members to participate in the new processes on terms of equality, nay, with a premium for the fact that they are the original inhabitants of the area and have a superior claim compared to anyone else.

5.4 However, there are two situations of such habitations which will have to be distinguished and considered separately. In the first phase of urbanisation, villages are brought under the jurisdiction of urban bodies just notionally. Their economy remains predominantly rural for a long time. The sudden change in the legal status poses a serious challenge to the people. The most serious facet of this change is that the community loses the authority to manage its affairs. It is helpless before extraneous forces. This aspect has claimed no attention so far, with disastrous consequences. As the process of urbanisation intensifies the economic structure of the community may undergo a fast change. The agricultural and allied activities gradually recede into background. The people become a part of the urban centre in due course. They may become like a *mohalla* or a ward of the urban body but with a difference. While other people in the urban centre tend to move with the tide of time, the tribals continue to remain at the receiving end, destined to fade out in the swirling waters of unconcern.

5.5 This must stop. *The only way to check this and to make the transition smooth is to ensure that community remains in command of its affairs during the transition.* With a view to ensure that people are able to take advantage of modernisation, two phases of urbanisation of a tribal habitation should be formally recognised as separate entities in the structure of urban bodies so that they can claim due attention. The habitations in the first phase, that is, when they are just notionally in the urban frame but remain essentially agricultural communities, should be allowed to remain

part of rural development framework. They should continue to get all the services and benefits which were available to them hitherto. It is important that the community continues to function as *Gram Sabha* till such time as structural transformation reaches a point where urban characteristics become dominant. At that stage the *Gram Sabha* could be formally recognised to have got transformed into a *Mohalla/Ward*, but with due recognition of the special feature of having recently graduated to that status.

5.6 We, therefore, recommend that :

- (i) The tribal habitation in an urban setting should be treated as a separate unit for the purposes of local self-government;
- (ii) There should be a distinction between the habitations just notionally included in urban bodies with their economies remaining predominantly rural and those which have got assimilated in the urban economy with agricultural and allied activities receding into background. The former may be designated as *Gram Sabha* while the latter as *Mohalla/Ward Sabha*; and
- (iii) The transformation of a *Gram Sabha* into a *Mohalla/Ward Sabha* should be recognised on the basis of structure of the economy, provided that it may be so approved by the Autonomous District Council after the concerned *Gram Sabha* agrees to that change. The ADC may make suitable rules in this regard.

Gram Sabha/Mohalla/Ward Sabha

5.7 The general assembly of the habitation, like *Gram Sabha*, should be fully empowered to manage its day-to-day affairs. In particular, it should continue to have command over resources within its jurisdiction. Any alternative use of these resources should not be allowed except with prior consent of the community and of persons depending on the same for their livelihood. The powers of *Gram Sabha* within the urban area should be broadly similar to those of the *Gram Sabha* in rural areas recommended by the Committee while extending the provisions of Part IX of the Constitution to the Scheduled Areas.

5.8 The basic premise of our proposal to retain the *Gram Sabha* structure even as the community gets absorbed in the urban setting is to ensure that the community remains active and

there is participative democracy at the grassroot-level. Even in urban areas, particularly older towns, the neighbourhood, or a *Mohalla* has played an important role in engendering community spirit in the same way as in the village. It is a pity that with the super-imposition of formal structures, this spirit has been on the wane in the urban conglomerations. *The neighbourhood is losing the binding forces of human relationships as people are getting alienated.* One of the important reasons for the rise in the crime, uncared destitutes and nonconcern for the finer aspects of life is this waning of community spirit. It is important that even as rural habitations get absorbed in urban areas they should be enabled to continue as a community. But this principle is universal. It should be applicable to non-tribal neighbourhoods as well in the urban areas. Therefore, the neighbourhood or a *Mohalla* should be formally recognised a unit of self-governance and participative democracy in all urban areas with well-defined functions and authority as given in Annexure-A. Each *Mohalla* may be treated as a ward for the purpose of sending representatives to the concerned urban local body.

5.9 *We recommend that :*

- (i) Like urban habitations/*mohalls*, other *mohalls* should also be treated as the primary units of self-governance and participative democracy within the urban bodies of Scheduled Area; and
- (ii) The functions, power and procedures concerning *Gram Sabha/Mohalla/Ward Sabha* may be as given in Annexure A.

Nagar Panchayat

5.10 The concept of a transitional area, as envisaged in Article 243Q(1)(a), is a welcome addition to the process of national development as this aspect has so far been totally neglected with adverse consequences for the people. The transition in the case of tribal areas has much greater significance since the process of urbanisation here is generally not an internal process of their economy. It is largely prompted by external forces like establishment of a highway, a railway line, an administrative centre or an industrial centre. In some cases, the transition may be in the nature of a mutation, in which case the tribal people may not be able to bear

the impact. In contrast, the slower processes are modest in absolute terms. Therefore, they tend to be ignored. But in the totality of their impact over a period and also over a large area, they may be devastating. The management of such processes of transition through the institutions of Nagar Panchayat as envisaged in the Constitution is, therefore, vital for future development in the tribal areas. We, therefore, have considered this issue in some detail.

5.11 The beginning of this transition may be small and innocuous like the setting up of a tea shop at a road junction. The beginning could also be like a big bang as with the establishment of an industrial township. While we are dealing with the issues concerning major structural transformation in the case of industrial/mining townships separately, we wish to deal here with the gradual processes which go unnoticed and remain unattended. In these locations of transition, the economy continues to be predominantly traditional and modern activities are limited. Even a weekly market or *hat* may be of great significance in such places. They not only function as a meeting point of the modern and the traditional, but are also centres of social interaction, dissemination of information and catalysts of social change. Therefore, regulation of *hats* is one of the important functions, recommended by us for *Panchayats*. It is the intermediate *Panchayats* which will be expected to play an important role in their regulation and promotion.

5.12 In view of the fact that the areas of transition, i.e., *Nagar Panchayats* will have a predominantly rural character and they will perform trading functions as also provide higher level support for social services, it will be necessary that there is a structure within the *Panchayat* to focus on the traditional rural development functions, as also an organic link-up between the intermediate *Panchayats* and *Nagar Panchayats*. This will mean that the *Nagar Panchayats*, even though they are urban bodies, should be a part of Intermediate *Panchayat* structure. However, in view of the vital role of *Nagar Panchayats* in development, the Autonomous District Councils should have special responsibility to guide and supervise their activities through intermediate *Panchayats*.

5.13 In view of the importance of transitional areas, each intermediate *Panchayat* should have an Urban Affairs Committee to guide the working of *Nagar Panchayats* within its jurisdiction. Similarly, in the ADC, there should be an Urban Affairs Committee to oversee the growth of urban centres and their functioning.

5.14 We, therefore, recommend that :

- (i) The transitional areas from rural to urban characteristics may be identified at the earliest possible stage and should claim special attention of the ADC and the concerned intermediate *Panchayat*;
- (ii) Such transitional areas may be constituted as *Nagar Panchayat* as soon as urban characteristics become significant;
- (iii) The *Nagar Panchayats* should perform all functions of the *Gram Panchayats* with such adaptations and additions as are given in Annexure B;
- (iv) The *Nagar Panchayats* should have a Standing Committee for rural development to cater to the conventional functions of the *Gram Panchayats*;
- (v) The composition of *Nagar Panchayats* will, as far as possible, be as per the structure of Municipal Committees hereinafter recommended. However, not less than the 50% of the members of *Nagar Panchayat* should be Scheduled Tribes;
- (vi) The intermediate *Panchayat* should have an Urban Affairs Committee for guiding the affairs of *Nagar Panchayats* within its jurisdiction in accordance with the objectives set out for them in the law; and
- (vii) The ADC should also have an Urban Affairs Committee which may guide the functioning of the Urban Affairs Committees of the Intermediate *Panchayats* and help the *Nagar Panchayats* to develop in harmony with the tribal economy and their advancement.

Municipal Council

5.15 While we have discussed in detail the approach to be adopted for transitional areas, it will be necessary to ensure that as urban characteristics become prominent, an effective body is set up for looking after the municipal functions proper. For this purpose, the population of the Core Urban Sector may be taken as an important criterion. The Core Urban Sector may comprise

the entire area of a *Nagar Panchayat*, except *Gram Sabha* areas in the periphery which are covered by it just notionally. In the tribal areas, a population of say 15,000 in the Core Urban Sector is sufficient to call for this change in administration. Similarly as the population of Municipal Council area exceeds one lakh, its administration may need further reinforcement as a larger urban area. We need not repeat here the responsibilities which we envisage for all urban bodies discussed in detail elsewhere. However, since rural development functions will remain important and vital for the tribal people even in these urban centres, there should be a Standing Committee on Rural Development. The Governor may make suitable Regulations in this regard incorporating the suggestions in this Report.

5.16 We recommend that :

- (i) A *Nagar Panchayat* may become eligible to be upgraded as a Municipal Council when the population of the Core Urban Area becomes 15,000. The Municipal Council, in its turn may qualify to become a Municipal Corporation when its population exceeds one lakh;
- (ii) There should be a Standing Committee for Rural Development in each Municipality responsible for the advancement of those engaged in agriculture and allied activities; and
- (iii) The powers, the structure and the procedures for the Municipal Councils should be as in Annexure C.

Industrial and Mining Townships

5.17 The problems and prospects in industrial and mining centres set up in the tribal areas are qualitatively different. The number of tribal people, who are directly affected by these ventures due to purchase of land, etc., may be small. Such cases may be recognised for grant of benefits. But the major issues which arise from industrial and mining activities have much wider range and ramifications. They are related to disruption of traditional communication links, destruction of water sources and water bodies, exhaustion of ground water and receding water table, establishment of railways and highways, heavy pressure on limited drinking water and other facilities due to sudden influx of population, pollution of

streams and air due to industrial effluents, dust and smoke. These issues either go unnoticed, or are inadequately appreciated, or may even be conveniently ignored. Moreover, the people who suffer most are even denied small benefits of the new economic activity either for want of skills or for the simple reason that they may not be able to compete with more articulate groups. The planning of industrial and mining townships, therefore, has to be perceived in a broader and dynamic framework rather than being confined to the limited problems of the day.

5.18 The experience of Special Area Development Authorities, for example in M.P., has not been a happy one. Even these authorities functioned more as agents of the new extraneous forces rather than serve as a balancing force between the larger community and industrial/mining Core. This question had been considered by the Government of India at the time of formulation of tribal sub-plans in the Seventies. The States were asked to take special note of the problems relating to industrial and mining centres in the tribal sub-plans. In particular, they were required to identify the 'zones of influence' of these centres. The project reports of all industrial/mining ventures were expected to have a comprehensive plan for the development of this zone of influence, integrating their economy with the core economy so as to enable the people living around to become partners in the development process. It is unfortunate that these guidelines were not operationalised. We strongly urge that they should be followed not only in letter but in their true spirit.

5.19 We recommend that :

- (i) In the case of each industrial and mining township, the zone of its influence should be identified and a comprehensive plan prepared for its development by a special body comprising representatives of the municipality, the industrial/mining projects(s), the local administration and the *Panchayats* in which the area falls. This task should be completed within a period of two years;
- (ii) The Master Plan should, *inter-alia*, make specific provisions - financial, institutional, legal - for
 - (a) ensuring a place of honour to all those whose lands are taken or who are indirectly affected by the new economic activity; and

- (b) integrating the economy of people living in the zone of influence of the industry with the core economy.
- (iii) No project hereafter should be cleared without such a Master Plan; and
- (iv) The Governor should constitute appropriate bodies for the management of Industrial and Mining Townships keeping in view the recommendations in this Report and other factors, as he may deem necessary.

Autonomous District Councils

5.20 As has been pointed out in the Report on *Panchayats*, the Scheduled Area in each State will be divided into a number of districts and each district will have an Autonomous District Council with legislative, executive and judicial powers. The urban areas and urban affairs will also come under its purview. We reiterate this recommendation of the Committee on *Panchayats*. However, in view of the growing importance of urban centres particularly with the establishment of industrial and mining complexes in the Scheduled Areas, we feel that Autonomous District Councils must have a strong wing for dealing with urban affairs. While transitional areas, viz., *Nagar Panchayats* will have links with intermediate *Panchayats* because of their predominant rural character, the municipalities and the industrial and mining townships will have a direct link with the Autonomous District Councils.

5.21 We, therefore, recommend that :

The Autonomous District Council, besides having the powers and functions as given in the Panchayat Report, should also have other functions and powers as given in Annexure D.

Representation in the Urban Local Bodies

5.22 The fact that the rural people in a Schedule Area were not ready for urbanization and their number got reduced to an abysmally low figure in urban centres should not be allowed to become a permanent hurdle for their participation in the growth process in future. The fact that the demographic structure of a Scheduled Area has changed due to in-migration could be recognized as it is. But effective measures must be taken forthwith to arrest and, also to the extent possible, reverse this process and give the tribal people an effective say in the functioning of urban bodies, guiding the development processes and ensuring that the

tribal people are enabled to make good early setbacks and become partners in development in keeping with the aspirations of the people in the concerned region. Besides the specific measures, which we have suggested earlier, it is necessary that the tribal people have reasonable representation in the urban bodies to ensure that they can play an effective role in decision making.

5.23 We, therefore, recommend that :

- (i) Seats may be reserved for Scheduled Tribes in every Municipal Council corresponding to their proportion in the population in the municipal area or one-third, whichever is higher;
- (ii) The seats of all the *Gram Sabhas*/Tribal *Mohalls*/Ward Committee included in the municipality may be reserved for Scheduled Tribes;
- (iii) The remaining seats may be allotted by rotation among others Wards in the municipality; and
- (iv) Either the Chairman or the Vice-Chairman of the urban body should be a member of the Scheduled Tribe.

Standing Committee for Tribal Affairs

5.24 While it is expected that the municipal committee in Scheduled Areas will give special attention to the matters outlined above, it will be necessary that a special Standing Committee for this purpose is constituted. This Committee should act as a Watchdog Committee. It should keep an eye on every aspect of urbanization with reference to its implications for the tribal people. Moreover, it should have specific responsibility in relation to special provisions for protection, welfare and advancement of the tribal people. This Standing Committee may comprise all tribal members of the municipality with the tribal Chairman or Vice-Chairman, as the case may be, as its Chairman. Moreover, the decisions of this committee should be binding on the municipality. However, if the municipality disagrees or contemplates some changes, the same may be referred back to the Standing Committee for its consideration. In case the Standing Committee reiterates its decision, it should be generally accepted by the municipality. However, if the municipality still considers that the decision has to be varied, it may be allowed provided a resolution to that effect is passed by three-fourths of the members. All such decisions of the Municipality,

where they differ from the recommendations of the Standing Committee, should be referred to the Autonomous District Council.

5.25 *We, therefore, recommend that :*

- (i) There should be a Standing Committee for Tribal Affairs in each municipality located within the Scheduled Area.
- (ii) The Committee should comprise tribal members of the municipality with the tribal Chairman or the tribal Vice-Chairman, as the case may be, as its Chairman.
- (iii) The Committee should be responsible for ensuring that no decision of the municipal committee is against the spirit of the frame outlined by us; and
- (iv) Recommendations of this Committee should ordinarily be binding on the municipality, provided that if the municipality disagrees or contemplates some changes, the same may be referred back to the Standing Committee for its consideration. In case the Standing Committee reiterates its decision, it should be generally accepted by the municipality. However, if still the municipality considers that the decision has to be varied, it may be allowed provided a resolution to that effect is passed by three-fourths of the members. All such decisions of the Municipality, where they differ from the recommendations of the Standing Committee, should be referred to the Autonomous District Council.

Higher Linkages and participation in Regional, State and National Economies

5.26 While we are presently concerned with the urban centres in the Scheduled Areas, any consideration of the vital issues of urbanization and tribals' participation therein is bound to be partial and incomplete without a reference to the hierarchy of urban centres from small towns to metropolitan centres in the nation as a whole which amongst themselves are organically linked. It is sad that the bulk of tribal population in the Scheduled Areas is being pushed out under the pressure of economic forces with no one to care at the other end. Consequently, *they can be found living in abysmal conditions in what can be termed as 'shums within shums', near stinking drains and repulsive junk yards. This is the most dehumanising process of a simple people getting marginalised.* If people are forced to pay the price for development through migration and are obliged to contribute to building up of the nation through their distress labour, attended by worst forms

of exploitation, it is incumbent on the nation to make suitable amends by providing for them in growth centres even outside the Scheduled Areas adequately and with due regard for human dignity.

5.27 We wish to invite attention to the recommendations of the Commissioner for Scheduled Castes and Scheduled Tribes in his Report to the President (28th Report) urging the State to provide suitable reservations in all new assets such as residential houses and commercial complexes which are being created even in the private sector in the urban centres through support of State and/or public institutions with a suitable built-in differential in favour of Scheduled Castes and Scheduled Tribes. It was also urged that the Government should provide necessary support so as to enable tribal people to take advantage of this dispensation. It is a matter of regret that no action on this recommendation has been taken so far, even after seven years have rolled by since the submission of this Report. We wholeheartedly reiterate the recommendations of the Commissioner.

5.28 *We, therefore, recommend that :*

- (i) In all urban centres at the regional, state and national level there should be reservation for Scheduled Tribes in proportion to their population in the concerned segment, i.e., in the division, state or nation, in all housing, commercial and industrial establishments;
- (ii) The State and the Union Governments should prepare special schemes for helping members of Scheduled Tribes to take advantage of said reservations; and
- (iii) All municipalities should have a special responsibility for providing adequate facilities for migrants from Scheduled Areas who may be brought for work as contract labourers, or who may reach there on their own.

Nodal Role in Union Government

5.29 What has been suggested above can be undertaken satisfactorily only on the firm foundation of knowledge about what is the present status of the tribal people, the way the phenomenon of development is affecting them in different situations and the people's response to the challenging. *Planning for*

urban development even as a concept is a new addition, ironically at a time when planning as a concept itself is at a discount. The outer glitter of urban centres has effectively pushed the human dimension in to background. It is protected by the premise that migration is not involuntary. Therefore, whatever may be state of people in absolute terms, it must have some relative advantage in comparison to that in other areas. This aspect, therefore, does not claim national concern except perhaps when the phenomenon assumes catastrophic dimensions.

5.30 Even when issues of urban development do claim attention, the human aspect is not in focus. Therefore, the weakest, the most innocent caught in that whirl, are the worst affected. It is time that the nation addresses the basic human issues of urbanisation and a beginning is made with a systematic study of the tribal situation in urban India. It is not the physical size of the problem but the severity of human affliction which should be assessed and appreciated. It will be appropriate if a beginning is made with Capital City of Delhi. The Ministry of Urban Affairs and Employment may commission a pilot study, in consultation with the Ministry of Welfare, which could pave the way for studies in other urban centres.

5.31 We, therefore, recommend that :

- (i) The Ministry of Welfare, which has the nodal responsibility for tribal welfare and development in the country, in collaboration of the Ministry of Urban Affairs and Employment, should focus attention on the tribal issues in the urban areas of the country located within the Scheduled Areas or outside, and take effective measures for their welfare and advancement; and
- (ii) A systematic study of tribals in urban areas should be undertaken under the aegis of the Ministry of Urban Affairs and Employment. A beginning may be made immediately with the metropolitan area of Delhi.

VI

SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

1. (i) The Parliament may make a Law as soon as possible incorporating the special features suggested by us in this Report. The Governor of the concerned State may make suitable regulations and/or modify other laws through public notifications using his powers and discretion under Schedule V of the Constitution within one year of the enactment of the above Law. They may provide for such details about institutional arrangements, rules, etc., as may be necessary for making the new scheme operational forthwith in the light of our suggestions and keeping in view the local socio-economic situation; and

(ii) Any provision of a law relating to Municipalities in force in a State immediately before coming into force of the proposed Act of Parliament, which is inconsistent with the provisions of that law, may continue to be in force until amended or repealed by the Governor under Para 5 of the Fifth Schedule, or until the expiration of one year from such commencement, whichever is earlier.

(Para 2.5)

2. (i) All the tribal areas in the rest of the country other than North-East, not covered under the Fifth Schedule, should be brought under the Fifth Schedule so that they also get the benefit of having institutions in consonance with the tribal situation as recommended by us in the two Reports; and

(ii) A Committee may be constituted for examining the situation in all tribal areas of the North-East and Sikkim irrespective of their formal classification under the Constitution for suggesting changes, if any, in the provisions of the Sixth Schedule, as also the special provisions in the Constitution for tribal States and areas, under Part IX of the Constitution and for making institutional arrangements for all other tribal areas. **(Para 2.21)**

3. Measures should be taken so as to ensure that urban centres located in the Scheduled Area function and develop as growth centres in the concerned region. Their activities should be supportive, in general, of the economic activities and, in

particular, of interests of the tribal people in the surrounding areas. They should also provide higher levels of social services, function as nuclei of diffusion of scientific temper and enrich cultural life of the region.

(Para 3.4)

4. (i) Preparation of a Master plan should be made obligatory for every urban local body in the Scheduled Area;
- (ii) Wherever such Master Plans have not been prepared so far, they should be prepared within a period of three years;
- (iii) Master Plans should focus, *inter alia*, on issues concerning the tribal people and harmonious growth of the region around. The suggestions made in this Report should be taken as guidelines for preparation of such plans; and
- (iv) The Autonomous District Councils should approve the Master Plans with such modifications as may be considered necessary in the furtherance of above objectives in general and tribal welfare in particular.

(Para 3.6)

5. (i) No land may be acquired except for the purposes of education, health, railways, communication and defence without prior consent of the *Mohalla/Ward Sabha* or the *Gram Sabha*, as the case may be, and of the person concerned, provided further that an alternative means of livelihood acceptable to the affected person is made available, besides ensuring an honourable position to him in the new setting; and
- (ii) No sale of tribal land may be permitted, without making the tribal owner a partner in the economic activity which may be taken up in the area using his land.

(Para 3.8)

6. (i) Stringent regulations should be made for prevention of alienation of tribal lands in the urban areas, identification of alienated lands and their restoration as a time bound programme.
- (ii) The onus of proof in case of a non-tribal in possession of land that once belonged to a tribal to establish that the land was acquired through legitimate and legal means should be on the non-tribal now in possession of the land; and
- (iii) All lands in the urban and industrial areas acquired in excess

of the long-term needs by different establishments should be identified and restored to their erstwhile owners within, say, three years.

(Para 3.11)

7. (i) Provisions similar to those in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 may be made in case of Scheduled Tribes to cover the situation, where migration may be within the State and outside the Scheduled District to which the labourers belong;
- (ii) A special stipulation in this Law should be made for education of the children of migrant tribal labour; and
- (iii) It should be made obligatory for the person hiring tribal labour and taking them out of the Scheduled District, to register with a competent/appropriate authority nominated by ADC and provide such details as may be prescribed by it in this regard. Any violation of this provision should be made a penal offence.

(Para 3.14)

8. (i) A suitable law should be enacted forthwith by the Parliament to eradicate this malpractice (false certificates) effectively and stringent punishment provided for offenders on both sides, that is, the person seeking and the person granting the false certificate; and
- (ii) A procedure for issue of tribe certificate should be framed forthwith by the Central Government incorporating the concept of a permanent computer number at the end of school education as recommended by the Commissioner for Scheduled Caste and Scheduled Tribes in his 28th Report and a Certificate by the *Gram Panchayat* based on the resolution of concerned *Gram Sabha* as suggested above.

(Para 3.18)

9. (i) No urban tax should be leviable on a tribal who continues to live in his traditional style. Clear norms should be laid down for exempting the original inhabitants of newly-emerging urban areas from this tax liability.
- (ii) In all programmes of development like establishment of housing colonies, trading centres, etc., reservation should

be made in favour of tribal people in proportion to their population in the concerned district.

- (iii) There should be no de-reservation, whatsoever, so as to enable the new facility to be availed by the tribals as and when they are ready for the same; and
- iv) The tribals should be encouraged to man, to the extent possible, Public Distribution System outlets, post offices and such like facilities in their areas.

(Para 4.2)

- 10. (i) The activities of Urban Centres should be so designed as to subserve tribal hinterland and promote its economy; and
- (ii) Stringent laws should be made for regulating all markets including weekly *hats*. Eradication of malpractices including harassment of innocent tribals, particularly women, on way to or in the market should be a special responsibility of the Urban Body.

(Para 4.6)

- 11. (i) No taxes should be imposed on tribal people bringing their produce for sale to urban areas;
- (ii) No taxes should be levied on tribal people living in urban areas engaged in handicrafts and household industries;
- (iii) All tribal establishments in urban areas should be exempt from all types of municipal and other taxes for a period of ten years, to facilitate their integration into the new environment; and
- (iv) Cooperative endeavours of tribal people should be established, encouraged and supported with a view to elimination of exploitation and for promoting their welfare.

(Para 4.7)

- 12. (i) Setting up of industries in Scheduled Areas at random and without assessing their impact on the tribal economy must stop forthwith;
- (ii) The Government should identify potential industrial areas in advance, after due process in which the people and the institutions should be able to participate meaningfully ensuring that community's decision prevails and is final;
- (iii) No agricultural land or land used for common purposes should be allowed to be transferred or purchased in any way for setting up of an industry; and

- (iv) In all industrial enterprises set up in the Scheduled Areas, other than small ventures referred to earlier, the community should be deemed to be the owner with 50% share in its favour by virtue of its allowing the industry to use the local resources and getting established. The share-holding of the company/persons making financial investment should be limited to not more 26%.

(Para 4.10)

13. Ways and means should be found for mopping up of the windfall gains due to appreciation of land and property value in the urban centres in the Scheduled Areas. A suitable mechanism should be evolved through which the municipality is entitled to a share of three-fourths of the unearned increase in the value of urban property at the time of its sale which should be credited to a special fund for social development in the area. Tribals deriving gains out of such unearned increase at the time of sale of their lands should be exempted for the time being from taxation until a new balance is attained in the area.

(Para 4.12)

14. (i) There shall be reservation of seats in all educational institutions - private or public- in urban centres for children belonging to Scheduled Tribes hailing from its hinterland in proportion to their population in the district, subject to a minimum of one-third of the total number of seats. They should be provided free education including all other facilities in these institutions *at par* with other scholars;

(ii) All health institutions located in a municipality - private or public - should be accessible to the Scheduled Tribes in the hinterland and their services should be made available to them free of cost; and

(iii) Municipalities should maintain neat, open and congenial places for rest and stay for the tribal people from the area visiting the town. These facilities should be free.

(Para 4.14)

15. (i) Municipalities should be responsible for promotion and good maintenance of all cultural and religious places of tribal people located within the municipal limits;

(ii) The concerned functionaries of the municipality should exercise strict vigil to avert defilement of cultural and religious places; and

- (iii) The neglect by officials and action by individuals leading to such defilement should be made a penal offence.

(Para 4.16)

- 16. (i) Measures should be taken to ensure that there is no commercial exploitation of tribal's cultural life;
- (ii) While tourism could be encouraged, tribal culture should not be portrayed as artifact of market;
- (iii) Municipalities should be duty bound not to allow luxury hotels in Scheduled Areas;
- (iv) There should be effective check against social pollution. No games of chance and similar activities should be allowed in or allowed to be operated from municipal areas;
- (v) Stringent laws should be made for effective check trafficking and exploitation of tribal women;
- (vi) Municipality should exercise stringent control over dishonourable occupations like domestic service, rickshaw pulling and child labour. There should be a legal prohibition on engaging members of Scheduled Tribes in these occupations;
- (vii) Strict watch shall be kept on antisocial elements. Special provision should be made for their expulsion from the area, if necessary; and
- (viii) Any infringement of these provisions should be a penal offence.

(Para 4.18)

17. In view of the special significance of the issues raised above, the President may issue directions to the Urban Local Bodies in Scheduled Areas in that regard. Such directions may be placed on the table of the Parliament and State Assemblies.

(Para 4.19)

- 18. (i) For the purposes of self governing institutions in the Scheduled Urban Areas, all urban centres may be designated, as the case may be, as 'Nagar Panchayats', 'Municipal Councils', 'Municipal Corporations' and Industrial/Mining Townships;
- (ii) The Governor may make rules for declaration and classification of urban areas having regard to the population, the state of employment in non-agricultural activities, the infrastructure,

social services, development potential and such other factors, as he may deem necessary; and

- (iii) An area may be notified as an urban area of appropriate category by the Governor in consultation with, or in pursuance of the recommendations of the Tribes Advisory Council.

(Para 5.2)

- 19. (i) The tribal habitation in an urban setting should be treated as a separate unit for the purposes of local self-government;
- (ii) There should be a distinction between the habitations just notionally included in urban bodies with their economies remaining predominantly rural and those which have got assimilated in the urban economy with agricultural and allied activities receding into background. The former may be designated as *Gram Sabha* while the latter as *Mohalla/Ward Sabha*; and
- (iii) The transformation of a *Gram Sabha* into a *Mohalla/Ward Sabha* should be recognised on the basis of structure of the economy, provided that it may be so approved by the Autonomous District Council after the concerned *Gram Sabha* agrees to that change. The ADC may make suitable rules in this regard.

(Para 5.6)

- 20 (i) Like urban habitations/*mohalls*, other *mohalls* should also be treated as the primary units of self-governance and participative democracy within the urban bodies of Scheduled Area; and
- (ii) The functions, power and procedures concerning *Gram Sabha/Mohalla/Ward Sabha* may be as given in Annexure A.

(Para 5.9)

- 21. (i) The transitional areas from rural to urban characteristics may be identified at the earliest possible stage and should claim special attention of the ADC and the concerned intermediate *Panchayat*;
- (ii) Such transitional areas may be constituted as *Nagar Panchayat* as soon as urban characteristics become significant;
- (iii) The *Nagar Panchayats* should perform all functions of the

Gram Panchayats with such adaptations and additions as are given in Annexure B;

- (iv) The *Nagar Panchayats* should have a Standing Committee for rural development to cater to the conventional functions of the *Gram Panchayats*;
- (v) The composition of *Nagar Panchayats* will, as far as possible, be as per the structure of Municipal Committees hereinafter recommended. However, not less than the 50% of the members of *Nagar Panchayat* should be Scheduled Tribes;
- (vi) The intermediate *Panchayat* should have an Urban Affairs Committee for guiding the affairs of *Nagar Panchayats* within its jurisdiction in accordance with the objectives set out for them in the law; and
- (vii) The ADC should also have an Urban Affairs Committee which may guide the functioning of the Urban Affairs Committees of the Intermediate *Panchayats* and help the *Nagar Panchayat* develop in harmony with the tribal economy and their advancement.

(Para 5.14)

- 22. (i) A *Nagar Panchayat* may become eligible to be upgraded as a Municipal Council when the population of the Core Urban Area becomes 15,000. The Municipal Council, in its turn, may qualify to become a Municipal Corporation when its population exceeds one lakh;
- (ii) There should be a Standing Committee for Rural Development in each Municipality responsible for the advancement of those engaged in agriculture and allied activities; and
- (iii) The powers, the structure and the procedures for the Municipal Councils should be as in Annexure C.

(Para 5.16)

- 23. (i) In the case of each industrial and mining township, the zone of its influence should be identified and a comprehensive plan should be prepared for its development by a special body comprising representatives of the municipality, the industrial/mining projects(s), the local administration and the *Panchayats* in which the area falls. This task should be completed within a period of two years;
- (ii) The Master Plan should, *inter-alia*, make specific provisions - financial, institutional, legal - for

- (a) ensuring a place of honour to all those whose lands are taken or who are indirectly affected by the new economic activity; and
- (b) integrating the economy of the people living in the zone of influence of the industry with the core economy.
- (iii) No project hereafter should be cleared without such a Master Plan; and
- (iv) The Governor should constitute appropriate bodies for the management of Industrial and Mining Townships keeping in view the recommendations in this Report and other factors, as he may deem necessary.

(Para 5.19)

24. *The Autonomous District Council*, besides having the powers and functions as given in the *Panchayat Report*, should also have other functions and powers as given in Annexure D.

(Para 5.21)

25. (i) Seats may be reserved for Scheduled Tribes in every Municipal Council corresponding to their proportion in the population in the municipal area or one-third, whichever is higher;
- (ii) The seats of all *Gram Sabhas/Tribal Mohalls/Ward Committees* included in the municipality may be reserved for Scheduled Tribes;
 - (iii) The remaining seats may be allotted by rotation among others Wards in the municipality; and
 - (iv) Either the Chairman or the Vice-Chairman of the urban body should be a member of the Scheduled Tribe.

(Para 5.23)

26. (i) There should be a Standing Committee for Tribal Affairs in each municipality located within the Scheduled Area.
- (ii) The Committee should comprise tribal members of the municipality with the tribal Chairman or the tribal Vice-Chairman, as the case may be, as its Chairman.
 - (iii) The Committee should be responsible for ensuring that no decision of the municipal committee is against the spirit of the frame outlined by us; and
 - (iv) Recommendations of this Committee should ordinarily be binding on the municipality, provided that if the municipality disagrees or contemplates some changes, the same may be referred back to the Standing Committee for its consideration.

In case the Standing Committee reiterates its decision, it should be generally accepted by the municipality. However, if still the municipality considers that the decision has to be varied, it may be allowed provided a resolution to that effect is passed by three-fourths of the members. All such decisions of the Municipality, where they differ from the recommendations of the Standing Committee, should be referred to the Autonomous District Council.

(Para 5.25)

27. (i) In all urban centres at the regional, state and national level there should be reservation for Scheduled Tribes in proportion to their population in the concerned segment, i.e., in the division, state or nation, in all housing, commercial and industrial establishments;

(ii) The State and the Union Governments should prepare special schemes for helping members of Scheduled Tribes to take advantage of said reservations; and

(iii) All municipalities should have a special responsibility for providing adequate facilities for migrants from Scheduled Areas who may be brought for work as contract labours or who may reach there on their own.

(Para 5.28)

28. (i) The Ministry of Welfare, which has the nodal responsibility for tribal welfare and development in the country, in collaboration of the Ministry of Urban Affairs and Employment, should focus attention on the tribal issues in the urban areas of the country located within the Scheduled Areas or outside, and take effective measures for their welfare and advancement; and

(ii) A systematic study of tribals in urban areas should be undertaken under the aegis of the Ministry of Urban Affairs and Employment. A beginning may be made immediately with the metropolitan area of Delhi.

(Para 5.31)

No. N-11025/40/94/-UCD

**GOVERNMENT OF INDIA
MINISTRY OF URBAN AFFAIRS
AND EMPLOYMENT**

Nirman Bhavan, New Delhi

Dated : 13th March, 1995

ORDER

Subject : Constitution of a High Level Committee to make recommendations on the salient features of the law for extending the provisions of the Constitution (74th Amendment) Act, 1992 to the Scheduled Areas.

It has been decided to constitute a High Level Committee to discuss and examine the issues relating to extension of the provision of Part IXA of the Constitution to the Scheduled Areas and to make recommendations on the salient features of the law for extending the provisions of this Part of the Constitution to the Scheduled Areas.

2. Accordingly, a High-Level Committee is hereby constituted with the following composition :-

- | | |
|--|----------|
| (1) Shri Dilip Singh Bhuria M.P. | Chairman |
| (2) Shri Shibu Soren, M.P. | Member |
| (3) Shri Bheru Lal Meena M.P. | Member |
| (4) Shri K. Pradhani M.P. | Member |
| (5) Shri Somjibhai Damor M.P. | Member |
| (6) Shri Manikrao H. Gavit M.P. | Member |
| (7) Shri Piyus Tirkey M.P. | Member |
| (8) Prof. M. Kamson M.P. | Member |
| (9) Smt. K. Kamla Kumari M.P. | Member |
| (10) Shri Manku Ram Sodhi M.P. | Member |
| (11) Shri. S. N. Brohmo Chaudhury M.P. | Member |
| (12) Shri Peter G. Marbaniang M.P. | Member |
| (13) Smt. Bibhu Kumari Devi M.P. | Member |
| (14) Shri Hiphei M.P. | Member |

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|---|--------|
| (15) Shri Sushil Barongpa M.P. | Member |
| (16) Shri Bandi Oraon, Vice-Chairman
SC/ST Commission | Member |
| (17) Dr. B.D. Sharma, Formerly Commissioner
for Sc/ST, Govt. of India | Member |
| (18) Dr. Bhupinder Singh, Formerly Special
Commissioner for SC/ST, Govt. of India | Member |
| (19) Shri D.N. Tiwari, Director General
Forest Research Institute Dehradun. | Member |
| (20) Shri B.A. Agarwal, Joint Secretary
and Legal Advisor, Deptt. of Legal Affairs,
Ministry of Law, Justice and
Company Affairs, Govt. of India | Member |
| (21) Shri P.K. Mohanty, Joint Secretary
Ministry of Welfare Govt. of India | Member |
| (22) Shri V.K. Malhotra, Joint Secretary (C.S.)
Ministry of Home Affairs. Govt. of India | Member |
| (23) Smt. Sushma Singh, Joint Secretary
Ministry of Rural Areas and Employment | Member |
| (24) Shri L.M. Menzes, Ex-Secretary
Ministry of Non-Conventional
Energy Sources, Govt. of India | Member |
| (25) Dr. Dinesh Mehta, Director
National Institute of Urban Affairs
Chanakyapuri, New Delhi. | Member |
| (26) Shri R. M. Kapoor, Chief
-Urban Studies Centre,
Times Research Foundation, Calcutta. | Member |
| (27) Shri M. S. Srinivasan, Joint Secretary (UD)
Ministry of Urban Affairs and Employment
New Delhi. | Member |

3. The terms of reference of this Committee would be as under :

(a) The Committee shall suggest steps for harmonisation of Fifth, Sixth, Eleventh and Twelfth Schedules of the Constitution as they may impinge upon the municipalities;

(b) It shall formulate the salient features of the law that may be taken up for enactment by Parliament for extending the provisions of Part IXA of the Constitution to the Scheduled Areas referred to in clause (1) of Article 244 of the Constitution subject to such exemptions and modifications as may be necessary under Article 243 ZC (3); and

(c) Variations and modifications in other Acts relevant to the Fifth Schedule Areas in order to strengthen Institutions of Local Governments in Fifth Schedule Areas.

4. The Committee would submit its recommendations within a period of three months.

5. The Committee will lay down its own procedure and methodology of work.

6. The secretarial assistance and related services to the Committee would be provided by the Ministry of Urban Affairs and Employment.

(M.S. Srinivasan)

Joint Secretary to the Government of India

POWERS, FUNCTIONS AND PROCEDURES FOR GRAM SABHA IN URBAN SCHEDULED AREAS

I. GRAM SABHA

Gram Sabhas included in an urban Scheduled Areas shall enjoy all powers, perform all functions and adopt all procedures as laid down for *Gram Sabhas* in the *Panchayats* of the concerned Autonomous District Council, but within the frame of Provisions of *Nagar Panchayat*, Municipality or Industrial Township, as the case may be.

Without in any way limiting the scope of the above provisions, the following special and additional provisions shall be incorporated therein :

- 1) Reinforcing the community spirit and taking such measures as may be necessary to ensure that personal interests do not become overbearing and that benefits of development are equitably distributed without allowing the differences among the members of *Gram Sabha* to grow beyond the limits of tolerance of an egalitarian society.
- 2) Planning, promotion and forging of links with the main Urban Centre in much a way that community and all its members acquire honourable position in the changed situation.
- 3) Upgradation of skills and promotion of special educational programmes for preparing the people for the new change.
- 4) Protecting interests of those of its members who get engaged in the economic activities of the main Urban Centre or who acquire new links as envisaged above and, wherever necessary, intervene on their behalf through the Municipal Council.
- 5) Permission to non-residents to move into the *Gram Sabha* area for residence or for work.
- 6) Approval of all agreements about collaboration in business between non-tribals and those whose lands are involved as envisaged in the law.
- 7) Revocation of permission/agreements of persons proving to be undersirable or guilty of indulging in anti-people activities.

- within a period of five years of the initial permission granted.
- 8) Change in the status of *Gram Sabha* to that of a *Ward Sabha* as the economy of the area undergoes structural change.

II. MOHALLS/WARD SABHAS

The *Mohalls Sabha Ward Sabha* in an urban Scheduled Area will enjoy all powers, perform all functions and adopt all procedures as laid down for *Gram Sabha* in (I) above, provided that the ADC may direct in accordance with the guidelines made in this regard, that some of them may be adapted, varied or deleted in view of the change in its socio-economic situation.

Without in any way limiting the scope of the above formulation, the following special and additional provisions shall be incorporated therein;

- i) Communal harmony;
- ii) Security and honour of its members specially the elders;
- iii) Helping the needy and destitutes;
- iv) Maintaining cleanliness, parks, play grounds and such like facilities;
- v) Cultural activities;
- vi) Supervision of supply of electricity, water and prevention of pilferage; and
- vii) Identification and removal of unauthorised occupation of land.

2. Approval of *Mohalla* plans particularly of housing and public places;

3. Protection and promotion of traditional artisans;

4. Public distribution and fair price shops.

POWERS, FUNCTIONS AND PROCEDURES FOR NAGAR PANCHAYATS

The *Nagar Panchayat* included in an urban Scheduled Area shall enjoy all powers, perform all functions and adopt all procedures as laid down for the *Gram Panchayat* of the concerned Autonomous District Council. However, the ADC may adapt the same suitably by way of deletion, change or addition in accordance with the guidelines made in this regard, in keeping with local situations in each case.

Without in any way limiting the scope of the above provisions, the following special and additional provisions shall be incorporated therein:

- 1) Approval of the Perspective and Operational Plans of the *Nagar Panchayat* area;
- 2) Formulation and execution of housing programmes;
- 3) Electrification including distribution ;
- 4) Development of non-conventional energy sources;
- 5) Supply of potable water, cleansing and disinfecting source of supply and storage of water;
- 6) Sanitation, conservancy and drainage and prevention of public nuisance;
- 7) Construction, maintenance and repair of streets;
- 8) Protection and promotion of artisans and cottage industries;
- 9) Formulation and execution of poverty alleviation programmes;
- 10) Management of public distribution system;
- 11) Management of 'hats' and markets.

STANDING COMMITTEE FOR RURAL DEVELOPMENT

There shall be a Standing Committee for Rural Development which will be responsible for all rural development functions in the *Nagar Panchayat* area.

All important decision taken by a *Nagar Panchayat* will be communicated to the concerned intermediate *Panchayat* which, in turn, will place them before the Autonomous District Council.

POWERS, FUNCTIONS AND PROCEDURES OF MUNICIPALITIES

PART - A

1 Municipalities shall function as units of self- government and, in order to achieve economic development and secure social justice for all, subject to such conditions as may be prescribed or directions as may be given by the Autonomous District Council (ADC), shall

(a) Prepare a five-year development plan and revise and update it, as and when necessary, with reference to the resources available;

(b) Prepare an annual plan for each year in advance for development of human resources, socio-economic advancement of the community, provision and/or reinforcement of the infrastructure, attention to civic amenities in the area, etc.;

(c) Arrange to have the plans, programmes and schemes included in the Five Year and Annual Plans implemented through the concerned agencies; and

(d) Examine and sanction the budget estimates of General Assemblies in its jurisdiction.

2. The Municipalities shall prepare, in the prescribed manner, a Report on the work done during the previous year and the work proposed for the following year and submit it to the prescribed authority and the ADC concerned, within the prescribed time;

3. A Municipality shall have the following powers and functions:

(a) Foster tribal endogenous institutions;

(b) Coordinate and integrate the development plans and schemes prepared by the General Assemblies in the block, with particular reference to the resource-potential of the area, the skills, aptitude and occupations of the people and availability of funds;

(c) Ensure compliance with the principle and contents of tribal sub-plan;

(d) Supervise and ensure proper functioning of *hats* and tribal cooperatives (LMPS, or by any other name called);

(e) Undertake schemes and adopt measures, including the giving of financial assistance relating to development of *khadi*, cottage and small-scale industries, cooperative movement, water-supply, public health and sanitation including establishment and maintenance of dispensaries and hospitals, communication, primary and secondary education, adult and non-formal education, welfare of students, electrification including its distribution, non-conventional energy sources, woman and child development, social welfare and other aspects of general public utility;

(f) Manage or maintain any work of public utility or any institution vested in it, or under its control and management;

(g) Make grants-in-aid to any school, public institution or public welfare organisation;

(h) Adopt measures for relief of persons in distress;

(i) Undertake execution of any scheme; perform any act; or manage any institution or organisation entrusted to it by the State Government or any other authority; and

(j) Other functions as may be prescribed by the Governor in a Regulation.

4. A scheme shall normally be executed by the municipality which has jurisdiction, unless the Autonomous District Council and/or the municipality are of the opinion that implementation of such a scheme is beyond its competence, financially or otherwise, and a resolution or resolutions are passed to that effect.

PART - B

1. The Municipality shall hold a meeting in its office at least once every three months on such date as the Municipality may fix at the immediately preceding meeting.

2. One-Fourth of the total number of members will form a quorum for a meeting. Provided that no quorum shall be necessary for an adjourned meeting.

3. All questions coming up before the Municipality shall be decided by a majority of votes. Provided that in case of equality of votes, the person presiding shall have second or casting vote.

4. A Municipality may set up Standing Committees to look after different aspects like planning, finance, cooperation, education, small industry, electrification, rural development,

5. Standing Committee on Tribal Affairs

There shall be a Standing Committee on Tribal Affairs which will comprise all tribal members of the Municipality. The tribal Chairman or the tribal Vice-Chairman, as the case may be, shall be the Chairman of the Committee.

The Committee should be responsible for ensuring that no decision of the Municipal Committee is against the spirit of the frame outlined by us.

Recommendations of this Committee should ordinarily be binding on the Municipality, provided if the Municipality disagrees, or contemplates some changes, the same may be referred back to the Standing Committee for its consideration. In case the Standing Committee reiterates its decision, it should be generally accepted by the Municipality. However, if still the Municipality considers that the decision has to be varied, it may be allowed provided a resolution to that effect is passed by three-fourths of the members. All such decisions of the Standing Committee should be referred to the Autonomous District Council.

6. (a) A Municipality shall, at such time and in such manner as may be prescribed, prepare each year a Budget of its estimated receipts and disbursements for the following

year and submit to the Autonomous District Council having jurisdiction;

- (b) The District Council may, within such time as may be prescribed, either approve the Budget or return it to the Municipality for such modifications as it may direct. On such modifications being made, the Budget shall be resubmitted within such time as may be prescribed for approval of the Council. If the approval of the Council is not received by the Municipality by the last date of the year, the Budget shall be deemed to have been approved by the Council.

C. (1) All government servants and functionaries of other institutions concerned with the functions of the Municipality and located within its jurisdiction will be under its control.

- (2) Education and health sectors shall be the first charge on the funds of the Municipality and notwithstanding any other provision, the District Council will have the power to appropriate funds from any other head for meeting this obligation.

- (3) Urban Local Bodies would formulate plans, keeping in view the welfare of tribal community in Scheduled Areas.

- (4) All important decisions taken by the Municipalities may be communicated to the Autonomous District Councils.

POWERS, FUNCTIONS AND PROCEDURES FOR AUTONOMOUS DISTRICT COUNCIL

Besides the provisions relating to powers, functions and procedures already envisaged for the Autonomous District Council in relation to *Panchayats* and urban bodies in Annexure D of the Report on *Panchayats*, consistent with power and functions conferred on the *Gram/Mohalla/Ward Sabhas*, *Nagar Panchayats* and Municipalities respectively in Annexures A, B and C and without in any way limiting the scope of the above formulation the following special and additional provisions shall be incorporated therein:

1) GENERAL

Ensure that urban centres function as growth centres and promote the interests and welfare of the tribal people in the hinterland and areas of their respective influence.

2) LEGISLATIVE

- a) Exempting the tribals from different types of levies, taxes and tolls on activities and occupations, appreciation of value of gains due to modern activity;
- b) Mopping up of windfall gains of persons not belonging to Scheduled Tribes in appreciation of land and property and its utilisation for harmonious development in the concerned area;
- c) Reservation of not less than one-third seats for Scheduled Tribes in private and public educational institutions, preference being given to those drawn from its hinterland.
- d) Extension of health facilities to members of Scheduled Tribes from the hinterland free of cost in all institutions, public or private;
- e) Clearance of industrial and mining projects, subject to preparation of Master Plans and provision of community ownership thereon;

- f) Regulation of tourism in general and prohibition of luxury tourism in particular;
- g) Prohibition of occupations considered dishonourable by the tribal people;
- h) Regulation of anti-social elements; and
- i) Reservation in all new assets such as residential and commercial complexes both in the Private and Public Sectors with a built-in differential for the Scheduled Tribes in general and those belonging to the hinterland in particular.

3) STANDING COMMITTEE ON URBAN AFFAIRS

There shall be a Standing Committee for Urban Affairs which shall be responsible for guiding the functioning of all Urban Bodies in the district. In case, the functioning of any Urban Body is not in consonance with the objectives in respect of tribal welfare and development, the Committee shall report the same to the Autonomous District Council. The ADC may issue such directions to the Urban Body, as it may deem necessary for achieving that objective. Such directions shall be binding on the Urban Body provided that the Urban Body may resubmit its position for review. In case differences persist between the Urban Body and the ADC, it may be referred to the Tribes Advisory Council, whose decision in that regard shall be final.

**THE PROVISIONS OF THE PANCHAYATS
(EXTENSION TO THE SCHEDULED AREAS) ACT, 1996
NO. 40 OF 1996**

An Act to provide for the extension of the provisions of part IX the Constitution relating to the Panchayats to the Scheduled Areas.

Be it enacted by Parliament in the Forty-Seventh year of the Republic of India as follows:-

- | | | |
|--|----|--|
| Short title : | 1. | This Act may be called the Provisions of the Panchayats (Extension to the scheduled Areas) Act, 1996 |
| Definiton : | 2. | In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in clause (1) of article 244 of the Constitution. |
| Extension :
of Part IX
of the
Constitution. | 3. | The provision of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in section 4. |
| Exceptions :
and
modifications
to Part IX of the
Constitution. | 4. | Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:- |

(a) a State legislation on the Panchayats that may be made shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources;

(b) a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affair in accordance with traditions and customs;

(c) every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level;

(d) every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution:

(e) every Gram Sabha shall—

(i) approve the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;

(ii) be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

(f) every Panchayat at the village level shall be required to obtain from the Gram Sabha a certification of utilisation of funds by that Panchayat for the plans, programmes and projects referred to in clause (e);

(g) the reservation of seats in the Scheduled Areas at every Panchayat shall be in proportion to the population of the communities in the Panchayat for whom reservation is sought to be given under Part IX of the Constitution:

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats:

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes;

(h) the State Government may nominate persons belonging to such Scheduled Tribes as have no representation in the Panchayat at the intermediate level or the Panchayat at the district level:

Provided that such nomination shall not exceed one-tenth of the total members to be elected in that Panchayat;

(i) the Gram Sabha or the Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas for development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas; the actual planning and implementation of the projects in the Scheduled Areas shall be coordinated at the State level;

(j) planning and management of minor water bodies in the Scheduled Areas shall be entrusted to Panchayats at the appropriate level;

(k) the recommendations of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory prior to grant of prospective license or mining lease for minor minerals in the Scheduled Areas;

(l) the prior recommendation of the Gram Sabha or the Panchayats at the appropriate level shall be made mandatory for grant of concession for the exploitation of minor minerals by auction;

(m) while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with—

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

(n) the State legislations that may endow Panchayats with powers and authority as may be necessary to enable them to function as institutions of self-government shall contain safeguards to ensure that Panchayats at the higher level do not assume the powers and authority of any Panchayat at the lower level or the Gram Sabha;

(o) the State Legislature shall endeavour to maintain the pattern of the Sixth Schedule to the Constitution while designing the administrative arrangements in the Panchayats at district level in the Scheduled Areas;

5. Notwithstanding anything in Part IX of the Constitution with exceptions and modifications made by this Act, any provision of any law relating to Panchayats in force in the Scheduled Areas immediately before the date on which this Act receives the assent of the President, which is inconsistent with the provisions of Part IX with such exceptions and modifications shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from the date on which this Act receives the assent of the President.

Continuance
of existing
laws and
Panchayat

Provided that all the Panchayats existing immediately before such date shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having Legislative Council by each House of the Legislature of that State.

IMPORTANT REFERENCES

1. **Whither Tribal Areas** Rs. 125/
(The book includes the First Report of Bhuria Committee and the Judgement of A.P. High Court)
2. **Fifty Years of Anti-Panchayat Raj** H. Rs. 250/ P. Rs.100/
(The book traces the history of village self-governance in India particularly the debates after independence. It has extensive extracts from the Constituent Assembly debates having bearing on that issue.)
3. **The Fifth Schedule Vol I & Vol II** Insti. Rs.300, Indi. Rs. 200
(Volume II of book reproduces in full the historic judgement-Samatha versus A. P. State, as also the texts of important International Conventions concerning tribal people. It also contains the relevant constitutional provision as well as the full list of Scheduled Tribes and Scheduled Areas. An in-depth review of the tribal scene is presented in Volume I)
4. **Tide Turned** Rs. 15/
(A detailed commentary on the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996. This Act has been acclaimed as the most radical law of the 20th century.)
5. **The Rise of Little Republics** Rs. 12/
(The assertion by people after the enactment of the Extension Act.)
6. **Self-rule Laws - M.P.** Rs. 100/ H. 40/ P.
(The test of relevant law in Scheduled Areas with an extensive commentary)
7. **Self-Rule Laws - Orissa** Rs. 30/
(The test of relevant law in Scheduled Areas with an extensive commentary)
8. **Dalits Betrayed** Insti. Rs. 295/ Indivi. 250/
(The full text of Part I of the Report of the Commissioner for Scheduled Castes and Scheduled Tribes (28th) with a detailed description of the follow-up action and Introduction by Dr. Upendra Baxi)
9. **Globalisation-The tribal Encounter** Rs. 195/
(A collection of essays by the author)

All these books are written by Dr. B.D.Sharma
and published by Sahyog Pustak Kutir

- 10. Forest and Fallows** H. Rs. 100/ P. 40/
(A critical review of forest policy as also the circulars issued by Govt. of India regarding dispute resolution.)
- 11. A Letter to the President** Rs. 25/
(The Letter written by the author while forwarding the 29th Report of the Commissioner gives a birds eye view of the tribal situation in the country.)
- 12. Can We Offord to Drink?** Insti. Rs. 150/ Indivi. 125/
(A critical analysis of the various aspects of excise policy in the country.)
- 13. Ministers Muddle as People Assert** Rs. 10/
(The initial reaction of the Establishment as expressed in a meeting at Delhi in 1997 soon after the Extension Act was passed)
- 14. Seven Open Questions** Rs. 8/
(Questions posed before all the political parties on the eve of general elections to the Parliament in 1997. The questions are basic and will continue to aqitate the people so long as the present imperial system continues)
- 15. 'Where do 'We, the People of Village-India stand?' as percieved by Our Political Parties** Rs. 8/
(An analysis of election manifestoes of 1999 Lok-Sabha on behalf of Village-Republies)
- 16. Catestrophic Development** Rs. 15/
(An essay on What is Development)
- 17. The People *Versus* the System** Rs. 20/
(A critical analysis of the present situation is which the people are pitched against the State)
- 18. The Debt Trap.** Insti. Rs. 20, Indivi. Rs. 15/
(Exposes the current conspiracy against the farmers by the credit Institutions and the Goverment)
- 19*. The web of Poverty** Rs. 295/
- 20*. Tribal Development The Concept and the Frome**
- 21*. Planning For Tribal Developmet** Insti. Rs. 200/ Indivi Rs. 150/
* currently out of stock

About the Author:

Dr. B.D. Sharma is an authority on tribal affairs in the country. His concern for the tribal people began in Bastar, the largest tribal tract of the country where he was posted as Collector and District Magistrate. While serving in the Central Government and State Government, he was responsible for formulation of tribal policies particularly what is known as sub-plan strategy. He was also instrumental in bringing back the Fifth Schedule on the national agenda.

Dr. Sharma who joined the IAS in 1956 resigned from the same in 1981 when differences arose on vital issues of policy. Nevertheless he became Vice Chancellor of North Eastern Hill University (1981-86), covering some of the most enchanting tribal regions comprising Nagaland, Mizoram and Meghalaya. He occupied the highest Constitutional position concerning tribal people, as the last Commissioner for Scheduled Castes and Scheduled Tribes during 1986-91 after which the National Commission was constituted. His reports to the President are a landmark, the 28th being described as 'next in historical significance only to the Constitution of India'.

Eversince 1991, Dr. Sharma is with the tribal people and participating as an activist in their struggles. The law concerning tribal self-governance, which acknowledges the competence of the village community to manage all its affairs according to its customs and tradition, is the most-significant achievement of the movement. His writings in Hindi and their translations have become proud possessions of every tribal household. He is basically a student of mathematics with doctorate in the same subject.